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**DOCUMENTS ILLUSTRATIVE
OF AMERICAN
MUNICIPAL GOVERNMENT**



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DOCUMENTS ILLUSTRATIVE OF AMERICAN MUNICIPAL GOVERNMENT

BY

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EDITORS' INTRODUCTION

This is a volume of documents illustrative of the development of municipal organization. Its contents are principally from the United States, but include a few references to foreign experience. It is intended to provide for college courses in municipal government material supplementary to that obtainable in the formal textbooks. It is not a book of "readings" in the ordinary sense, that is, a collection of the opinions of various authors about the problems of municipal government, but rather a source book which attempts to illustrate these problems with selections from charters, laws, cases, and official reports. Its pages offer a record of the actual practice of municipal government in the past and in the present.

It must be admitted that no complete picture of municipal organization at any period can be given by this method. The fullest collection of documents could not reproduce all of the many gradations of municipal history or present a complete picture of city government in the United States to-day. The documents here gathered together, however, have been selected to set forth what is most significant and typical in the changing structure of our municipal institutions, with the purpose of thus vitalizing the study of municipal government.

The advantages to be derived from directly acquainting the student of municipal government with the actual source materials of the subject have been too much neglected. One of the chief purposes of education is to teach the student to find truth for himself. This is particularly the case in courses in municipal government, in which the motive is largely the preparation of the student for effective citizenship. He should be taught to read charters, ordinances, judicial decisions, the reports of investigating commissions, and the like, and to draw his own conclusions from them. There would seem to be no better way of reaching this goal than to introduce him, as part of his course, to the study of such documents. From the point of view of sound scholarly method, familiarity with the use of source materials is admittedly essential.

From the point of view of effective citizenship, it is even more important. The student of law reads and analyzes cases not so much to fill his mind with points of law as to master the technique of analyzing any case presented to him. This book is in a sense a case-book of municipal government. Its use, it is hoped, will help the college-bred citizen to be able to analyze correctly the new charters and other documents which will from time to time be presented to him for consideration.

Most of the documents selected are not reprinted in their entirety. The originals are in some instances of prodigious length, and most of them contain a great deal of matter quite extraneous to the purposes of this work. Care has been taken, however, to retain everything pertinent to the subject illustrated by each selection. In a few instances different portions of the same document have been used to illustrate separate topics. In some cases in which there has been an opportunity for choice between materials of equal value, those less readily accessible have been chosen.

The selection of materials has been governed by the hope of giving at least an approximate record of the development of municipal government from its colonial origins to its most recent form. Considerable space is devoted to a subject hitherto almost entirely neglected in works on municipal government, i.e., the government of metropolitan areas. Descriptions of the governments of London and Berlin illustrate foreign efforts to cope with the problems arising from the extension of metropolitan communities beyond the limits of political units. American attempts at solving this problem are represented by the borough organization of New York City, the act creating the Chicago Sanitary District, the statutes creating the Montreal Metropolitan Commission, the New York Port Authority compact, and the California Public Utilities District Act. These agencies range in nature from authorities having power over only one function, such as the New York Port Authority, to bodies created to deal with virtually all the aspects of municipal government within the metropolitan area, such as the law covering the present organization of Berlin.

The preparation of this collection was carried on in connection with that of Thomas H. Reed's "Municipal Government in the United States," and the general organization of the two works is somewhat similar. Both deal with municipal government as a continuing development. The arrangement of this volume, however, is its own. An effort has been made to place the selections

in logical order and in their proper setting. Each is preceded by a short explanatory note. It is believed, therefore, that this collection of documents may be used to advantage in connection with any standard text in municipal government.

Valuable suggestions for organization of contents were found in "Materials Illustrative of American Government" by Rodney L. Mott, which appeared while the plans for the book were being drafted.

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DOCUMENTS ILLUSTRATIVE
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PART I

THE BEGINNINGS OF CITY GOVERNMENT IN THE UNITED STATES

1. First Report of the Commissioners Appointed to Inquire into the Municipal Corporations in England and Wales, 1835.

American city government is almost exclusively English in its origin. The colonists brought with them from the mother country their ideas with regard to municipal corporations, and the cities which they established on this side of the Atlantic were almost exact replicas in organization of those they had left at home. The first comprehensive city charter to be granted in America was that given to New York by Governor Dongan in 1686. Between that year and the American Revolution twenty-one municipal corporations were created, several of which were, however, of no practical importance. Little information is available as to the working of their governments. There is, however, in existence an authoritative account of the English municipalities of the period. This is to be found in the report of a commission appointed to inquire into the municipal corporations in England and Wales, which made its report to Parliament in 1835. The first portion of the report deals with the constitution of the English municipalities, and the second part contains a very searching criticism of the way in which they performed their functions. This report marked, in a very real sense, the beginning of modern city government in England. It showed the existence of shocking abuses, which led Parliament to pass, in the same year, the Municipal Corporations Act, establishing a uniform and decent type of city government. It is a significant starting point for the student of American city government. The

cities of our colonial period never reached the depths of corruption which disgraced their English sisters. This was due, however, more to the simple conditions of colonial life than to any merit in the form of government. The same evil tendencies which existed in the English cities were latent in the cities of colonial America.

About 1835 our cities were changing their forms of government in more or less conscious imitation of the organization of the state and national governments. It is interesting to observe how, starting from a common original, city government has developed in different directions on the two sides of the Atlantic. It is in the report of the Commission on Municipal Corporations that we can obtain the best picture of that original.

SOURCE—Great Britain. *First Report of the Commission to Inquire into the Municipal Corporations in England and Wales* (London, 1835), I, 16-49.

EARLY CONSTITUTION

10. In the examination of the constitutions of the several Corporations, the Commissioners have seldom found it expedient to enter into details of their earlier history; they have confined themselves in most instances to an enumeration of the charters in possession of the municipal authorities, or a brief summary of their contents.

11. It would be difficult to describe accurately the early constitution of the Municipal Corporations in England and Wales; it is certain that many of their institutions were established in practice long before they were settled by law. In some places, as at Newcastle-upon-Tyne, Carlisle and Scarborough, the forms of the municipal government were defined by an express composition between the magistracy and the people. It is probable that the powers of government in all ordinary cases were exercised by the superior magistracy, but that in extraordinary emergencies the whole body of burgesses was called upon to sanction the measures which interested the community. The difficulty of conducting business in such an assembly seems to have suggested the expedient of appointing a species of committee out of the larger body, which acted in conjunction with the burgesses, and which was dissolved when the business was concluded. These committees afterwards

became permanent. In some boroughs the common councils seem to have been formed out of fragments of the leet juries, whilst in others we have reason to suppose that they were what their name strictly imports, councillors, called into the chamber by the aldermen or presiding functionary, with whom they were to advise. We have not discovered that there was any general principle in the mode of forming the constituency of the boroughs, nor can we assume that any one system of policy or common law right prevailed at any period throughout the realm. As far as we can judge, neither the opinion of those who treat every extension of authority beyond the select body as a popular usurpation, nor of those who view every municipal Corporation as formed out of a symmetrical and uniform organization of the people, can be supported. It is sufficient that we are enabled to collect the main principles of administration, namely, that the municipal magistracy and municipal councils were the resident and effective heads of the community, and that the community probably included in its members, all who shared in its burthens, and were liable to fill its offices.

12. In a period, of which the beginning cannot be distinctly shown to have been much earlier than the reign of Richard II., arose a new and very important feature of our municipal policy, namely, the annexation of the powers of "Justices of the Peace and of Labourers" to the municipal magistracy, with a considerable enlargement of their civil and criminal jurisdiction.

In that reign the usage began of appointing municipal magistrates Justices of the Peace by charter, and in many instances, with a non-intromittant clause. The practice gained ground, though at first slowly; and thereby produced an essential change in the functions and character of the municipal magistracy. Another very important feature of the era between the reigns of Richard II. and Henry VI. is the introduction of a legal principle hitherto unknown; that is, of a municipal body politic and corporate which takes by succession, admitting members upon a mere personal right, without any qualification either of residence or of property.

13. The greater number of the governing charters of Corporations was granted between the reign of Henry VIII. and the Revolution; the general characteristic of these documents is, that they were calculated to take away power from the community, and to render the governing class independent of the main body of the burgesses. Almost all the councils, named in these charters, are

established on the principles of self-election. The criminal jurisdiction of the boroughs received still further enlargement; and numerous instances occur in which a recorder was created, which office had been before that time confined to some of the larger boroughs. There is little reason to doubt that the form given to the governing classes, as well as the limitation of the burgess-ship, during this period, was adopted for the purpose of influencing the choice, or nomination, of Members of Parliament. At this time the honorary office of High Steward was created in many boroughs, by which the borough became connected with the aristocracy or with the Crown. Some of these charters contain clauses by which the right of electing Members of the House of Commons is limited to the select bodies which they created.

14. During the reigns of Charles II. and James II. many corporate towns were induced to surrender their charters, and to accept new ones, containing clauses giving power to the Crown, to remove or nominate their principal officers. After the proclamation by James II., dated 17 Oct., 1688, the greater number of these towns returned to their former charters. The charters which have been granted since the Revolution are framed nearly on the model of those of the preceding era; they show a disregard of any settled or consistent plan for the improvement of municipal policy, corresponding with the progress of society. The charters of George III. do not differ in this respect from those granted in the worst period of the history of these boroughs. It has become customary not to rely on the Municipal Corporations for exercising the powers incident to good municipal government. The powers granted by Local Acts of Parliament for various purposes, have been from time to time conferred, not upon the municipal officers, but upon trustees or commissioners, distinct from them; so that often the Corporations have hardly any duties to perform. They have the nominal government of the town; but the efficient duties, and the responsibility, have been transferred to other hands.

CORPORATE BODY

15. The constitutions of the existing Municipal Corporations in England and Wales, are exceedingly various in detail, and do not admit of being summarily described, except with regard to some of their most prominent features. Some corporate towns are counties, and have the same powers in that character as the shires

of the realm. The importance of others is increased by the exclusive jurisdiction which the corporate magistrates exercise within their limits. The constitution of a great number is, practically, much affected by the return of Members of Parliament. The municipal powers of many are almost nominal. Tables are appended to this Report, classing the several Corporations of England and Wales with reference to these distinctions. These Corporations generally consist of a number of freemen, having within themselves a governing body, besides magistrates and various officers. They will be considered successively with reference to each of these heads.

16. A distinction of great practical importance may be made between Corporations consisting of a definite and those of an indefinite number. Most of the charters incorporate the men and inhabitants of the borough. There are very few charters, which unequivocally designate the corporate body as a small and definite number of persons, but in many places, custom (supported by the silence of the charters as to any general right to the franchise, and by its disuse and oblivion, where any such may have formerly existed) has practically established the same restricted constitution. A very numerous class of Corporations exists, which may be considered as occupying a middle place between those in which the number of corporators is indefinite, and those in which it is now treated as necessarily definite. This class consists of the Corporations, in which, although there is no doubt, both from the wording of the charters, and from the modern practice, that the number of corporators may be indefinite, it has been the policy of the ruling body to restrict the number, so as to retain all the privileges constitutionally belonging to a large and indefinite body in the hands of a small and select one.

17. In a great proportion of the instances in which the number of corporators is, both in constitution and fact, large and indefinite, the freemen have no share in the management of the affairs of the Corporation; this prevails to so great an extent, that, in such Corporations, the Commissioners often found that the freemen had long ceased to consider themselves as forming any part of the Corporation, which term, in popular language, was exclusively applied to the ruling body. In some places, this notion has been further refined upon, and a distinction has been drawn in the large indefinite body of corporators, between those elected by the ruling body, and those claiming by an independent right; the former

class only being treated as forming an integral part of the Corporation.

18. In those Boroughs where the number of corporators is definite, or where it has been always kept small, the principal mode of entering the Corporation is by the nomination of the ruling body. In some cases the election must be from persons qualified, the most usual qualification being residence in the borough; in other cases, the choice of the electors is unfettered by any conditions of eligibility in the persons chosen. This mode of acquiring the freedom is usually said to be by gift or purchase, and in fact, a sum of money varying with the circumstances of the Corporation and supposed value of the franchise, is usually paid by each corporator on his election. In the Boroughs where, both by charter and in practice, the number of corporators is unlimited, the circumstances under which the freedom may be demanded of right are very various; but almost all may be classed under the general titles of freedom by birth, marriage and servitude. In a few places, the possession or occupation of property gives a title to the freedom. A distinction is now made every where between the freemen and the inhabitants, except in a very few places, as at Beccles and Wisbech. The right of conferring the freedom by sale or free gift is claimed and exercised by the ruling body of almost every Corporation.

Particular officers of the Corporation, usually the Mayor, are frequently allowed to name a certain number of persons to be admitted to the freedom; but although this practice has nearly acquired the force of positive law, it appears in its origin not to be distinguishable from the general power exercised by the ruling body, who have in these cases agreed to acquiesce in their officers' nomination. In the city of London, where the price of admission to the freedom has been long settled, this privilege of naming to the freedom is now treated in almost every case as the grant of so much money to the officers, and is so carried to account in the city books.

19. It is necessary in London, Shrewsbury, and many other towns, in order to complete a title to admission to the municipal freedom, that the party applying should be first admitted a member of certain Guilds or Trading Companies still existing within the Borough, and preserving various degrees of connexion with, and subordination to the Municipal Corporation. There are traces of a more general prevalence of the same custom at an early period.

The derivative title which confers a right of admission to these Guilds, is usually of the same kind as that by which the Municipal Corporation itself is entered.

Those Guilds also are accustomed to admit purchasers to be of their Company; but such purchasers neither acquire nor can convey any absolute right to admission into the Municipal Corporation. Occasionally, as at Bristol and Evesham, an incorporated Guild has continued to exist after its connexion with the Municipal Corporation has been almost or altogether dissolved. . . .

23. In most Corporations, the right to the freedom, or citizenship, or burgess-ship, has been restricted to a much smaller class than that which formerly possessed it. Without inquiring when Corporations in this country assumed their present form, it may be safely asserted, that the body, however named, which was originally intended to share, and which in fact did share, in the rights which the early charters conferred, embraced the great mass of the householders or inhabitants. By degrees, exclusive qualifications were insisted on with increasing strictness, and with new exceptions, as the privileges to which these exclusive bodies laid claim, rose in importance. This importance again was enhanced by the narrowing of the access to the privilege, and the consequent diminution of the number of individuals sharing in its advantages.

24. The functions of the freemen in most towns arise out of their share in the election of Members of Parliament, and of their own corporate officers. They have retained the former right in many places in which they have been long deprived of the latter.

25. The share which the freemen at large now take in the election of their governing bodies and corporate officers, is in most places very limited.

In a great majority of those towns in which there is a large body of freemen, they have no share whatever in those elections. In a few instances, such as Berwick-upon-Tweed, Ipswich and Carmarthen, they have the right of electing, from among themselves, all, or nearly all, the corporate officers, in others, such as Beverley and Pontefract, they elect only the Mayor; in Norwich, they elect the Aldermen, Common Councilmen, and one of the two Sheriffs; in some, such as Plymouth, they have the right of electing their officers out of a select body; in others, as Oxford and Swansea, they have only the power of selection from the nominees of such a select body. In many places, where the system of self-election now prevails, no trace exists of a more popular mode having been used

at any time; in others, such as Newcastle-under-Lyme and Bridgnorth, the right clearly appears to have been taken away from the freemen by ancient usurpation of the select body; and in the case of Newcastle-under-Lyme, it has been recently restored, after an interval of 200 years, by a decision of the Court of King's Bench.

In some towns these rights are possessed only by the resident freemen, in other places by all the freemen, whether resident or non-resident. The latter is the more common case.

26. The privileges of the freemen, besides their share in elections, generally consist in exemption from the tolls and duties which in many towns are levied under various grants from the Crown. In the greater number of towns, the privilege extends only to those tolls levied by their own Corporation; the freemen of some Corporations claim and are allowed to be free in certain cases from those of other towns; a very few claim an universal exemption. The freemen, in most towns, are exclusively eligible to corporate offices. The freemen are also very generally excused from serving on county juries; this exemption is often enjoyed by all the inhabitants of corporate towns. They have sometimes exclusive privileges in the local courts, the existence and extent of which will be presently noticed more in detail. They have in many places the exclusive right of trading within the corporate limits, as in Oxford, York and Beverley. Another privilege often belonging to the freemen is, that they or their widows or children are designated as the sole objects of local charities.

GOVERNING BODY

27. The government of the existing Municipal Corporations in England and Wales is generally vested in a chief officer, and a council, called the Common Council, over which he presides. The chief officer or head of the Corporation is variously designated as mayor, portreeve, bailiff, steward, &c. Sometimes the chief authority is shared between two, as bailiffs or stewards. In some towns, bailiffs co-exist with and are subordinate to the mayor.

In some boroughs the freemen are themselves the governing body, as at Ipswich, Carmarthen, and Berwick-upon-Tweed.

In Richmond, the government was formerly in a select body of 24, which has ceased to exist, and the affairs are now managed by a council, subject to the assent of all the freemen.

28. The body of the council is often composed of two classes;

the most common distinctive name of the superior class being that of aldermen, while the others are simply called common councilmen. In many places the aldermen, or those who occupy an analogous station in the Corporation, have real municipal powers beyond those of the other members of the council; in others, the distinction is merely honorary. In a few towns there are more than two classes in the common council.

In many Corporations, the presence of a majority of each class of the common council is necessary to constitute it a legal assembly; instances rarely occur in which the aldermen meet also by themselves as a separate deliberative chamber.

In some corporations, as at Kingston-upon-Hull and Pontefract, the head of the Corporation, and the aldermen, or persons filling an analogous situation, constitute the whole council.

29. A legal officer, who is found in most Corporations with the title of Recorder, is occasionally constituted by charter a member of the common council.

In some towns other officers also become by their office members of the common council; as the bailiffs at Carlisle, the sheriff at Newcastle, the coroners and chamberlains at Scarborough, the sheriffs, coroners and chamberlains at Lincoln, the sheriffs and all who have served the office of sheriff in York.

30. The same form of government by means of a mayor and common council has been preserved, in the Corporations consisting of a definite number, and in those in which the number, though indefinite, has been purposely kept low. In the former case, the common council generally comprises the whole Corporation, and nearly the whole in the latter.

31. There are very few instances in the Corporations of indefinite number, in which, as at Berwick-upon-Tweed and Ipswich, the general body of the freemen have the power of choosing whomsoever they please of themselves as the head of the Corporation. Sometimes, he is chosen by the freemen from the aldermen, or from the members of the common council. In some boroughs he is chosen by the body at large from among two or more nominated by the select body. The most common case is, that he is elected either from the aldermen or common councilmen, by the court of aldermen or common council. In London, and some other towns, he is elected by a popular assembly from the aldermen, subject in London to confirmation by the court of aldermen. In some places, he is presented by the jurors of the court leet. In several boroughs

the same person is re-eligible only after a given interval. In all cases the election is for a year.

32. The members of the common council are elected in the great majority of instances by the common council, or by that division of it commonly comprised under the name of aldermen. In some cases, they are nominated by the mayor. The election is generally for life. Residence is sometimes a necessary qualification: often it is little attended to. The aldermen generally fill up vacancies in their own body from the other division of the common council; in other cases this class consists of all who have passed the chair. The aldermen also are usually chosen into that class for life. London and Norwich afford instances, among others, of elections by large bodies of freemen. In both these cities, the aldermen are elected for life, and the common councilmen annually. In London, they all are elected by the freemen, who for a year have occupied houses of a certain value, and who pay local taxes to a certain amount. In Norwich, all are elected by the freemen, without any qualification of residence, property, or local taxation.

33. The charters generally empower the Corporations or the Governing Bodies to make bye-laws for the good rule and government of the town, and in some instances to tax the inhabitants for municipal purposes.

This legislative authority is exercised by the Common Council; but in a great number of corporations the power is disused, and no bye-laws are made. In some cases, the regulations and bye-laws are offered for approval or confirmation to a more popular assembly.

Some charters require that the bye-laws shall be approved by the Judges of Assize. Many Corporations have the power of enforcing their bye-laws by fine and imprisonment, but these powers are very little exercised.

The Common Councils have many other important duties to perform. They often nominate all the freemen; they appoint and settle the salaries of the corporate officers; they manage the corporate property. In many cases they elect the borough magistrates, and used to choose the Members of Parliament for the borough. They dispense the patronage belonging to the Corporation, and distribute the charities of which the Corporations are trustees. They are often commissioners under local Acts. In several boroughs some or all of the duties here attributed to the common council are exercised by the aldermen, more rarely by the mayor alone.

Other duties, which generally devolve on the members of the common council, independently of their share in the government of the Corporation, belong to such among them as are judges of the civil courts, or magistrates, and in that capacity only: the exercise of these functions will be more conveniently noticed in a subsequent place. In scarcely any case do they legally receive any salary or emolument, either as members of the common council or magistrates.

In London, allowances are made for regular attendance on the committees, in which the great mass of business is prepared for the consideration of the common council. The labour incurred by these committees is very great, for which the small sums so received are a very inadequate recompense.

CORPORATE OFFICERS

34. The duties entrusted to the several officers of the Corporation vary so much, in consequence either of prescriptive usage, bye-laws, or the express directions of the Charters, that the following account must be taken to represent that form of constitution only which is found to be most prevalent. The chief officers in most Corporations, besides the Mayor, and Recorder, are a Town Clerk, a Coroner, and a Chamberlain or Treasurer. In those cities and towns which are counties, there are also Sheriffs. The mayor, recorder, town clerk, and sheriff, often have power to appoint deputies, to exercise in some cases the whole, in others a part only of their duties. Besides these principal officers, there is a great variety of subordinate officers, into the details of whose elections and functions it does not appear necessary to enter, in a general view of the system of Corporations.

35. Many Corporations have an officer called the High Steward, whose legal connexion with them is entirely honorary. He is generally elected by the common council; sometimes his election must be confirmed by the Crown. He is usually a nobleman, and seldom resident in the borough: the office probably originated in the desire of the Corporation to secure a patron, in connexion with the Metropolis and Court, to whose protection they might betake themselves in cases of difficulty or danger to their privileges. In those boroughs which have a patron, in the sense usually attached to the word in more recent times, he is commonly found in the person of the High Steward, sometimes in that of the Recorder.

36. The mayor or head of the Corporation, under whatever name, besides being (either in person or by deputy) the president of the common council, as already stated, is the chief magistrate and executive officer of the Corporation. The manner of his election has been already mentioned. In almost all boroughs returning Members to Parliament, he is the returning officer, except in those boroughs or cities which are counties. This duty is there usually exercised by the sheriff, as in the shires of the realm. The mayor usually presides at the quarter sessions for the borough, and is often a judge of the court of record, where such a court exists; but the actual conduct of the business of the latter court generally devolves on other functionaries. He is often coroner *ex officio*, but many boroughs have a distinct officer for those duties. He is generally clerk of the markets, and sometimes keeper of the gaol; he is occasionally treasurer of the Corporation. In those boroughs which have local Acts, for the purposes of police, paving and lighting, &c., the mayor is usually a commissioner, *ex officio*, and without other qualification. In a few ports, as at Rochester, he is the admiral, to the exclusion of the Admiralty of England; in others, as at Southampton, he has by charter a concurrent jurisdiction of that nature. He is often conservator of the rivers and waters adjoining the city or borough of which he is mayor.

In numerous instances, the appointment of the inferior officers of the Corporation rests chiefly or entirely with the mayor, and in many small places, he practically unites in his person almost all the authority of the whole body. He commonly receives a salary: in some small boroughs, as at Buckingham, the whole of the corporate revenue is taken by him without account; more usually a fixed sum is paid to him, besides tolls, which are often collected exclusively in his name and on his behalf. He is generally expected to exercise hospitality towards the other members of the Corporation, and distinguished visitors of the town; and on the whole it is probable that more is expended in this manner than is realized from the ordinary emoluments of the office. In some boroughs no salary or emoluments of any kind belong to it.

37. The Recorder, sometimes called the Steward, is elected in most cases by the common council; in many others by the aldermen; in some cases, by the general body of the burgesses or freemen. Occasionally, the consent of the crown is requisite to his appointment. By the terms of most of the charters in which a Recorder is named, he is required to be learned in the law. This condition

is sometimes considered to be complied with by electing a peer of the realm, who being a judge by the constitution of Parliament, has been held to come within that technical description. Sometimes Recorders have been chosen, notwithstanding such a provision in the charter, who were neither peers nor educated to the legal profession. It has been stated that this office is sometimes filled by the individual who is commonly styled the patron of the borough. In most of such cases, either there are no real functions to be exercised by the Recorder, or he has the power of appointing a deputy, by whom most of his duties can be performed.

38. The Recorder generally holds his office during good behaviour. He is the principal legal adviser of the Corporation. His other duties are chiefly magisterial and judicial. He is commonly a magistrate within the borough, and a judge of the courts of quarter session and record, where these exist. In some places, the recorder is only assessor to the justices: at Hull, Newcastle, Preston, and some other towns he is not a judge of the court of record.

He is seldom required to be resident in the borough. The Deputy is sometimes a barrister; but in numerous instances the Town Clerk practically officiates as Deputy Recorder, as will be noticed again when speaking of that officer. The salary attached to the office of Recorder is, in the majority of cases, so trifling, as to be altogether nominal; in many instances it has not been received for several years. In other cases the office has a large salary attached to it.¹ . . .

44. In most Corporations a power exists of fining those who refuse to serve the corporate offices to which they are elected. The principal offices are generally so much desired, that no recourse is had to compulsory means to fill them; in some towns, as Maidstone, it seems that there would be great difficulty in keeping the Corporation properly supplied without some means of compulsion. Such fines have been occasionally made a source of considerable emolument. At Leeds, the whole revenue of the Corporation has

¹ The commissioners also found great differences in the qualifications, appointment, duties, and compensation of other corporate officials: the sheriff, bailiffs, coroner, town clerk, and chamberlain or treasurer. The sheriff, coroner, and treasurer had functions much like those of the American municipal officials having the same title. The bailiffs performed duties much like those of a sheriff in certain boroughs; in some places the office had become entirely nominal. The English town clerk, even in 1835, was the legal adviser of the corporation. The legal business to be obtained directly or indirectly, was usually the principal inducement for seeking the clerkship.

accrued from this source. It is generally understood, that the members of the select, or ruling body, are exempted from serving the inferior offices of the Corporation, and in some Corporations of definite number, as at Andevor, a power is exercised of compelling the inhabitants at large to fill the inferior offices, though they are now considered to form no part of the Corporation. Fees are payable in almost every case to the Corporation and its officers on admission to the freedom; to which must be added, in places where Guilds exist, the fees payable to them and their officers for admission into the Company.

MAGISTRATES

45. In almost all the principal boroughs there are municipal magistrates, whose authority as justices of the peace extends over the whole borough. They are often chosen by the common council, and almost always are members of it; where there are aldermen, they are usually taken from that class. The mayor is always the chief magistrate within the borough, when the borough justices are named in the charter: in a few cases, as at Lancaster, Preston and Liverpool, he is also *ex officio* a magistrate of the county. The recorder is in most cases one of the justices. When the mayor is a magistrate, most of the magisterial business falls on him; in many Corporations his magisterial authority continues for a year, or a longer time, beyond the period of his mayoralty, either by the express words of the charter, or by a customary election.

In many of the large cities and boroughs, all the aldermen are magistrates; in others only those are so who have passed the chair, as in Liverpool, Norwich and Lynn; in Norwich, the aldermen who have not passed the chair are magistrates in their own wards. In other towns, as Portsmouth, a certain number of aldermen only are annually elected to that office, which ceases with the year, unless they are re-elected. In Doncaster three aldermen are chosen to be magistrates as long as they continue aldermen. In many towns, as Carlisle and Kendal, the senior aldermen only are magistrates. In Ripon, the two aldermen who were last mayors are magistrates; in Richmond, the last mayor only is so constituted.

Their jurisdiction is sometimes concurrent with that of the county magistrates, more commonly exclusive; and even when the county magistrates have a concurrent jurisdiction, it is rarely exercised by the latter within the borough.

CRIMINAL COURTS

46. The majority of Corporations in England and Wales exercise a Criminal Jurisdiction within the limits of the Borough; in some, no traces of any such powers can now be found; in others, it has been long disused; in others, it is but partially exercised. Many send all serious cases to the County Sessions or Assizes. Some of those which formerly exercised jurisdiction over capital offences have now abandoned it; others, as Salisbury, Southampton and Chichester, still try capital offences; but when capital punishment is expected to follow conviction, an arrangement is made to prevent a trial before the corporate authorities solely. Several Corporations, as Berwick-upon-Tweed, Bristol, Canterbury, Exeter, Rochester, still exercise their chartered privilege of trying and executing criminals for capital offences. In a few cases, the criminal jurisdiction given by charter includes that of a Court of Admiralty. . . .

47. The ordinary Criminal Courts are those of gaol delivery, and of general and quarter sessions. The courts of gaol delivery are found in very few places; where they exist they are sometimes held under the charters without any commission issuing from the Crown. In London, Oxford, and some other places they are never held without such a commission. Where no commission issues, the corporate magistrates are the sole judges. The time of holding these courts is sometimes discretionary with the corporate magistrates, sometimes regulated by the charter, as at Exeter, where they must be held four times a year, and are in practice opened at the same time as the quarter sessions. The same remark applies to the courts of general sessions. The borough sessions seldom differ as to the times and manner of holding them, from the county quarter sessions. In all the corporate courts some magistrates are specially named, without whose presence the court cannot be held; these are usually the mayor or recorder, sometimes both. Where the presence of the recorder is not necessary for holding the courts, he sometimes does not attend; the whole business is often conducted before him. At Bristol, the recorder tries the prisoners at the gaol delivery, but does not attend the quarter sessions: the prisoners at the quarter sessions are tried before the mayor and aldermen, but virtually by the town clerk, who there is necessarily a barrister. . . .

CIVIL COURTS

50. In a large majority of the boroughs in England and Wales, there are local civil courts, with a jurisdiction co-extensive with the limits of the borough. These in general have their origin in particular charters, but occasionally they exist by prescription. They vary considerably with regard to the nature of the actions which they may entertain. In some, actions real, personal and mixed may be brought, and in general they have cognizance of all personal actions. The amount for which such actions can be brought is often unlimited (subject to the power of removal); while in several of the courts it is restrained to the recovery of debts under a given sum. Those courts whose powers are most limited, are confined to suits where the debt or damage does not exceed 40s. In practice, suits for any other cause of action than debts are seldom instituted in these courts, unless in some of the larger boroughs, where the ordinary kinds of actions which occur at Assizes are tried. . . .

52. The presiding officer in these courts is generally the mayor, and hence they are not unfrequently termed the Mayor's Court. Sometimes the bailiffs preside with the mayor, in other instances the recorder, and occasionally some of the aldermen are judges. In other cases, the recorder, though a magistrate of the borough, is not a judge of the Court of Record. The town clerk in many boroughs practically officiates as judge. The officers of these courts in general are, the Town Clerk, and the Bailiffs or Serjeants-at-Mace. The town clerk usually performs all the duties of the court, except those which belong to the office of sheriff. He issues the writs, files and enrolls the proceedings, grants rules, taxes the costs, and signs the judgments. . . .

POLICE

56. In a very great number of towns there are no watchmen, nor police officers of any kind, except the constables, who are unsalaried officers. They are sometimes appointed at a court leet, more frequently by the corporate authorities. The Police, and the powers conferred by local Acts for paving, lighting and watching the town, are seldom exclusively in the jurisdiction of the Corporation; sometimes they are shared by the corporate authorities, and

Commissioners; sometimes, are vested in Commissioners alone. Many of the corporate functionaries are often named in these Acts as commissioners *ex officio*. In several large towns, more than one of these Boards has been introduced. In many places, where powers to watch and light have been obtained, they are not put in execution. Some boroughs have adopted the provisions of 11 Geo. IV. c. 27, for enabling parishes to levy rates for lighting and watching. . . .

PROPERTY

63. Many of the Corporations have considerable Revenues derived from various sources; from lands, leases of tithes, and other property; from tolls of markets and fairs; from duties or tolls imposed on the import or export of goods and merchandize, usually called town dues; from other duties, as from quay dues, anchorage, &c.; and from fees payable on the admission of officers and burgesses, as well as from fines imposed on persons refusing to perform the duties of corporate offices.

64. In many of the Corporations the revenues are sufficient for the maintenance of all necessary municipal institutions. In many, though amply sufficient for supporting the various purposes for which municipalities were instituted, they are but partially applied to them. In most, however, the revenues would be inadequate to these purposes, though they should be entirely expended upon them. In several boroughs a rate is levied on the inhabitants, in the nature of a county rate. There are many instances among the boroughs returning Members to Parliament in which the revenues are inadequate to the wants of the municipality, and in which the deficiency has been supplied either from the funds of the patron, or by the Members for the borough. In some, before the passing of the Reform Act, the Members for the borough or the patron paid all the municipal expenses. Since that epoch, these contributions have ceased, and such Corporations have no longer the means of maintaining municipal institutions of any kind.

65. Extensive commons often belong to the freemen of corporate towns, the benefits of which are shared by them in various modes. Sometimes, as at Lancaster and Bath, the whole is farmed out, and the profits are divided among all or a certain number of them; more frequently they themselves exercise, under restriction, the rights of common of pasturage. At Berwick-upon-Tweed, where the affairs are administered by the whole body of burgesses, the

value of the lands of which the profits are taken by the freemen, is near £6,000 per annum.

Some Corporations hold their estates charged with the duty of repairing bridges and other works in their neighbourhood. Others have the control of funds appropriated to specific objects connected with the welfare of the town. In numerous cases, they are the trustees of property vested in them for charitable purposes.

66. The revenues of the Corporations are variously employed: a great part is usually absorbed in the salaries of their officers, and entertainments of the common council and their friends. The costs of prosecutions at the borough sessions and of supporting the gaols, form part of the expenditure in some places. It is not often that much of the corporate property is expended on police or public improvements.

67. The debt of many Corporations is extremely heavy. In some, the payment of the interest absorbs a very large proportion of the revenue; others are absolutely insolvent.

68. The facts with respect to the amount and management of the corporate property, the expenditure and the debts, have been in many places elicited with difficulty, and only imperfectly, owing to the irregular manner in which the accounts have been kept. In some places no accounts are kept, in others they are kept in a very imperfect manner; in very few is there any regular and efficient audit, and in still fewer any publication, of the accounts.

PATRONAGE

69. The Corporations frequently possess patronage, both ecclesiastical and lay. They present to livings, appoint lecturers, masters of schools and hospitals, and have the power of selecting the objects of various charities. This patronage is sometimes exercised by the governing bodies, sometimes by particular officers.¹ . . .

CORPORATE BODY

71. The most common and most striking defect in the constitution of the Municipal Corporations of England and Wales is,

¹The report is divided into two parts, the first of which, ending with Sec. 69, was intended to give "a general view of the ordinary constitution of the Municipal Corporations in England and Wales." The commissioners then proceed to point out certain defects in the corporate system.

that the corporate bodies exist independently of the communities among which they are found. The Corporations look upon themselves, and are considered by the inhabitants, as separate and exclusive bodies; they have powers and privileges within the towns and cities from which they are named, but in most places all identity of interest between the Corporations and the inhabitants has disappeared. This is the case even where the Corporation includes a large body of inhabitant freemen: it appears in a more striking degree, as the powers of the Corporation have been restricted to smaller numbers of the resident population, and still more glaringly, when the local privileges have been conferred on non-resident freemen, to the exclusion of the inhabitants to whom they rightfully ought to belong. . . .

73. The importance which the privilege of electing Members of Parliament has conferred upon Corporate Towns, or rather upon the governing bodies there, and the rewards for political services, which are brought within the reach of the ruling corporators, have caused this function to be considered in many places as the sole object of their institution. In some Boroughs this right has survived all other traces of municipal authority. The custom of keeping the number of corporators as low as possible may be referred to this cause, rather than to the desire of monopolizing the municipal authority, which has been coveted only as the means of securing the other and more highly prized privilege.

Hence a great number of Corporations have been preserved solely as political engines, and the towns to which they belong derive no benefit, but often much injury, from their existence. To maintain the political ascendancy of a party, or the political influence of a family, has been the one end and object for which the powers intrusted to a numerous class of these bodies have been exercised. This object has been systematically pursued in the admission of freemen, resident or non-resident; in the selection of municipal functionaries for the council and the magistracy; in the appointment of subordinate officers and the local police; in the administration of charities entrusted to the municipal authorities; in the expenditure of the corporate revenues, and in the management of the corporate property. The most flagrant abuses have arisen from this perversion of municipal privileges to political objects. The Commissioners have generally found that those Corporations which have not possessed the Parliamentary franchise, have most faithfully discharged the duties of town government,

and have acquired, more than others, the confidence and good-will of the communities to which they belong. This has been the case in some, even where the ruling bodies are strictly self-elected, and where the general character of their constitution is open to the objections common to the great majority of Corporations. Very few large corporate towns were without Members of Parliament, even before the Reform Act, so that many instances cannot be given from among them. The Corporations of Leeds, Lynn and Doncaster may be cited as turning their attention to their municipal duties more sedulously than the majority. Among small towns, deserving the same character, we refer to the Corporations of Louth, Bideford, Maidenhead, Beccles, South Molton and Stratford-upon-Avon.

74. Admission into the corporate body has commonly been sought mainly with a view to the lucrative exercise of the elective franchise. In those towns where a large body of freemen return Members of Parliament, the years in which elections have happened, or immediately preceding those in which they have been expected, are distinguished by the admission of a number greatly exceeding the average: even without the confirmation which particular inquiries afforded, it would have been impossible to avoid connecting the two events. . . .

75. The election to municipal offices is often a trial of strength between political parties. Instances of systematic bribery, for the purpose of securing municipal elections, occur at Maidstone, Norwich, Ipswich, Liverpool, Oxford, Hull, &c. Thus the inhabitants have to complain, not only that the election of their magistrates and other municipal functionaries is made by an inferior class of themselves, or, by persons unconnected with the town, but also, of the disgraceful practices by which the magisterial office is frequently obtained: while those, who by character, residence, and property, are best qualified to direct and control its municipal affairs, are excluded from any share in the elections or management.

76. One of the principal means by which the ruling parties in Corporations have effected their great object of securing political influence has been the limitation placed on the right to admission into the corporation. Whatever may have been the case formerly, the ordinary qualifications for admission to the freedom are now little calculated to answer the purpose of ascertaining, that the persons so qualified possess a real connexion with the community, and an interest in its good government; whilst the power exercised by many Corporations, of admitting any one at pleasure, without

qualification of residence or property, has been productive of un-mixed evil.

GOVERNING BODY

77. In the few boroughs in which the powers of local government are vested in a numerous body of freemen, the general character of the governing body is vitiated by the defects of its organization, which have already been pointed out. The exclusive and party spirit which belongs to the whole corporate body, appears in a still more marked manner in the councils by which in most cases it is governed. It has been stated that the members of these councils are usually self-elected, and hold their offices for life. They are commonly of one political party, and their proceedings are mainly directed to secure and perpetuate the ascendancy of the party to which they belong. Individuals of adverse political opinions are, in most cases, systematically excluded from the governing body. Since the repeal of the Corporation and Test Acts, and the removal of the civil disabilities of the Catholics, very few instances occur in which either Catholics or Dissenters, who often form a numerous, respectable and wealthy portion of the inhabitants, have been chosen into the governing body of the corporation. These councils, which embody the opinions of a single party, are entrusted with the nomination of magistrates, of the civil and criminal judges, often of the superintendents of police, and are or ought to be the leaders in every measure that concerns the interests and prosperity of the town. So far from being the representatives either of the population or of the property of the town, they do not represent even the privileged class of freemen; and being elected for life, their proceedings are unchecked by any feeling of responsibility. The discharge of the functions with which they are entrusted, is rendered difficult by the dislike and suspicion which the manner of their election inevitably entails upon them.

78. To this system may be traced the carelessness often observed in the execution of their duties; and persons well qualified for the council are excluded, sometimes for want of vacancies, sometimes through the rejection of the electing body, sometimes through the refusal of such persons to identify themselves with a system of which they disapprove. The common council of the city of London presents a striking exception to the system of self-election for life, and it affords a remarkable instance of the absence of those

evils which we refer to it. The common councilmen of this city are annually elected by a numerous constituency, yet changes seldom happen among them. The important requisities of experience in the functionary, and the power of control in the electors, are there effectually united, and produce that efficiency and confidence which are wanting in most other corporate towns. The history of the common council of London is that of a body which has watched vigilantly over the interests of its constituents, and for a long series of years has studied to improve the corporate institutions with great earnestness, unremitting caution, and scrupulous justice.

79. It is part of the general system of close Corporations that all their affairs should be managed with the strictest secrecy, sometimes secured by oaths administered to the members of the common council. The inhabitants who are subject to the authority of the Corporation, have frequently very imperfect information, as to its nature and extent; they are ignorant whether it derives its sanction from prescription, from charters, or from bye-laws; and the only mode by which they can obtain information is often through the troublesome and expensive process of an application for a *mandamus* or *quo warranto*. The bye-laws which are made, as well as those which are repealed, are seldom published, and the public is generally unacquainted with their provisions, except from common rumor. This ignorance is sometimes shared by the members of the Corporation. Hence violations of the charters and bye-laws have been often made with impunity.

CORPORATE OFFICERS

80. One vice which we regard as inherent in the constitution of Municipal Corporations in England and Wales is, that officers chosen for particular functions are regarded as a necessary part of the legislative body. This notion appears to have originated in times when the separation of constitutional authorities was not understood; when legislative, judicial, and executive functions were confounded. The Corporations of England and Wales were originally framed on principles encumbered with this confusion, and have been modified, down to the latest changes, with a scrupulous observance of them.

81. This union of different functions has been productive of much evil. The respect which ought to be entertained towards the

magisterial office, has been impaired by the manner in which the magistrates of a corporate town have been involved in the local politics of the body which regulates its taxation, manages its property, and superintends the working of its constitution.

82. It will be apparent from the preceding remarks, that we consider the union of the functions of a magistrate with the other duties of the mayor or other head of the municipal council, one of questionable expediency. Other functions often united with the office of mayor might be advantageously separated from it. The duties of coroner are of this description. There are serious objections also to the practice of allowing the mayor to act as the treasurer of the Corporation, when the examination and audit of his accounts is placed in the body over which he presides. Inconvenience of an opposite kind occurs, where several persons are required to concur in executing the duties of a single office; evidence of such inconvenience appeared at East Retford and Berwick-upon-Tweed. . . .¹

89. The party spirit which pervades the Municipal councils, extends itself to the magistracy, which is appointed by those bodies, and from their members. The magistrates are usually chosen from the aldermen, and the aldermen are generally political partisans. Hence, even in those cases in which injustice is not absolutely committed, a strong suspicion of it is excited, and the local tribunals cease to inspire respect. The corporate Magistrates, generally speaking, are not looked upon by the inhabitants with favour or respect, and are often regarded with positive distrust and dislike. . . .

POLICE

102. The police belonging to Municipal Corporations is for the most part very insufficient, and for supplying the deficiency, resort is had to local Acts. The superintendence of the police, and the powers necessary for watching, paving, lighting, cleaning and supplying the towns with water, instead of being entrusted to the municipal authorities, are for the most part committed by these Acts to various independent bodies; although none of these

¹ Numerous instances of irregularities in the choice of the mayor, recorder and other corporate officials, and in the conduct of their offices, were reported by the commissioners. The wealth of detail supporting the commissioners' contention that a "thorough reform must be effected" was largely responsible for creating sufficient pressure to cause the passage of the Municipal Corporations Act of 1835.

towns are too extensive to be embraced by one system of municipal government; for instance, every quarter of the town of Bath is under the care of a separate board, except one, which is totally unprotected. Much confusion results from this divided authority. The powers of local taxation, and the superintendence of matters so closely connected with the comfort and well-being of the inhabitants, which are now exercised by these bodies, appear to belong precisely to that class of objects for which corporate authority was originally conferred; but great dissatisfaction would prevail among the inhabitants, if these powers were entrusted to the Municipal Corporations as at present constituted. In several towns much apathy is now shown by the inhabitants with respect to the municipal benefits conferred by these Acts; in Southampton, where the consent of the inhabitants is required to bring them within the powers of a local Act, nearly half of the town has refused the benefit of it. Great jealousy often exists between the officers of police, acting under the Corporation and those under the Commissioners of these local Acts, and the corporate body seldom takes any active share in the duties of the board, of which its members form a part. At Bristol, a notoriously ineffective police cannot be improved, chiefly in consequence of the jealousy with which the Corporation is regarded by the inhabitants. At Hull, in consequence of the disunion between the governing body and the inhabitants, chiefly arising out of a dispute about the tolls and duties, only seven persons attended to suppress a riot, out of 1,000 who had been sworn in as special constables, and on another similar occasion none attended. At Coventry, serious riots and disturbances frequently occur, and the officers of police, being usually selected from one political party, are often active in fomenting them. In some instances, the separate and conflicting authority of the Commissioners is avowedly used as a check and counter-balance to the political influence of the Corporation. At Leeds, no persons are elected Commissioners of Police whose political principles are not opposed to those of the Corporation.

An ineffectual attempt to obviate the evils resulting from the want of a well-organized system is made in some towns by subscriptions for private watchmen. At Winchester, after a local Act had been obtained, its powers were found to be insufficient, and the town is now watched by private subscription, to which the commissioners contribute £100 from the rate.

The superintendence of the paving and lighting, &c., of the

various towns is in the same unsatisfactory state, but, in this branch of police, the want of a single presiding authority leads perhaps to less evil and inconvenience.

EXTENT OF LOCAL JURISDICTION

103. The frequent occurrence of precincts, in the heart of the corporate towns, not subject to the authority of their magistrates, has been mentioned. Such places, by protecting offenders against the law, still present the same obstacles to an effective police, which were once found in sanctuaries. In many cases great inconvenience results from the want of extension of the corporate authority over the suburbs; and these evils are likely to recur continually, unless ready means could be afforded of enlarging the boundaries from time to time, in such manner as circumstances should require. . . .

108. The evils which have resulted from mismanagement of the corporate property are manifold and of the most glaring kind. Some Corporations have been in the habit of letting their lands by private contract to members of their own body, upon a rent and at fines wholly disproportionate to their value, and frequently for long terms of years. Others have alienated in fee much of their property for inadequate considerations. At Cambridge, practices of this kind have prevailed to a very great extent. In large towns such malversations are less frequent, the most striking defects in those places not being the clandestine appropriation of the corporate property, but carelessness and extravagance in the administration of the municipal funds, and an exclusive distribution of patronage among friends and partisans.

109. In some towns large sums have been spent in bribery and the other illegal practices of contested elections. During the election of 1826, the Corporation of Leicester expended ten thousand pounds to secure the success of a political partizan, and mortgaged some of their property to discharge the liabilities incurred. In Barnstaple and Liverpool the funds of the Corporation have been wasted in defending from threatened disfranchisement a body of freemen, who had been proved guilty of bribery.

110. In general, the corporate funds are but partially applied to municipal purposes, such as the preservation of the peace by an efficient police, or in watching or lighting the town, &c.; but they are frequently expended in feasting, and in paying the salaries of unimportant officers. In some cases, in which the funds are ex-

pended on public purposes, such as building public works, or other objects of local improvement, an expense has been incurred much beyond what would be necessary if due care had been taken. This has happened at Exeter, in consequence of the plan of avoiding public contract, and of proceeding without adequate estimates. These abuses often originate in the negligence of the corporate bodies, but more frequently in the opportunity afforded to them of obliging members of their own body, or the friends and relations of such members.

111. Some Corporations consider that their property has been vested in them solely as trustees for the public; but, in most cases, this truth is acknowledged only when forced on their attention, is received with difficulty and qualification, and is continually forgotten. Few Corporations admit any positive obligation to expend the surplus of their income for objects of public advantage. Such expenditure is regarded as a spontaneous act of private generosity, rather than a well-considered application of the public revenue, and the credit to which the Corporation, in such a case, generally considers itself entitled, is not that of judicious administrators, but of liberal benefactors. Even in these cases, party and sectarian purposes often prevail in its application.

112. From this erroneous but strongly rooted opinion, that the property of the Corporations is held in trust for the benefit of the corporate body only, distinguishing that body from the community with which it is locally connected, the transition is not difficult to the opinion that individual corporators may justifiably derive a personal benefit from that property. At Cambridge, the practice of turning the Corporation property to the profit of individuals was avowed and defended by a member of the council.

113. This principle has been undisguisedly adopted in few corporations compared with the number of those in which it is indirectly acted upon. Some sense of impropriety, indicated by the secrecy with which such transactions are conducted, has accompanied the execution of long leases for nominal considerations, or the alienations in fee of the corporate property to individual corporators. Advantages of a different kind are offered in the shape of salaries to sinecure, unnecessary, or overpaid officers. These indeed are less injurious to the character of the individuals who profit by them than direct misappropriation, as custom has been supposed to sanction them; but the loss to the community is the same. A system of lavish expenditure of this kind, which is found

in many of the important Corporations, is more extensively mischievous than actual peculation, because there is no want of persons willing to profit by it, at the same time that the direct appropriation of the capital, instead of the income of the Corporation, is generally contemplated as a fraud upon the public. . . .

In conclusion, we report to YOUR MAJESTY that there prevails amongst the inhabitants of a great majority of the incorporated towns a general, and, in our opinion, a just dissatisfaction with their Municipal Institutions; a distrust of the self-elected Municipal Councils, whose powers are subject to no popular control, and whose acts and proceedings being secret, are unchecked by the influence of public opinion; a distrust of the Municipal Magistracy, tainting with suspicion the local administration of justice, and often accompanied with contempt of the persons by whom the law is administered; a discontent under the burthens of Local Taxation, while revenues that ought to be applied for the public advantage are diverted from their legitimate use, and are sometimes wastefully bestowed for the benefit of individuals, sometimes squandered for purposes injurious to the character and morals of the people. We therefore feel it to be our duty to represent to YOUR MAJESTY that the existing Municipal Corporations of England and Wales neither possess nor deserve the confidence or respect of YOUR MAJESTY'S subjects, and that a thorough reform must be effected, before they can become, what we humbly submit to YOUR MAJESTY they ought to be, useful and efficient instruments of local government. . . .

2. The Nicolls Charter of New York, 1665.

The Dutch settlement of New Amsterdam received, toward the close of the Dutch period of occupation, a municipal status and a form of government modeled on that of Dutch cities of the day. Governor Richard Nicolls, in June, 1665, granted a charter of incorporation to the then town of New York, which abolished the former Dutch offices and provided for the government of the city by a mayor, aldermen, sheriff, etc. This is the earliest record of the incorporation of a permanent municipality in America.

SOURCE—Mark Ash, *The Greater New York Charter, 1037-1038* (Albany, 1897). The ancient spelling of the original charter was not reproduced by the editor. Used by permission of Mr. Ash.

WHEREAS, upon mature deliberation and advice, I have found it necessary to discharge the form of government late in practice within this his Majesty's town of New York, under the name and style of Schout, Burgomasters, and Schepens, which are not known or customary in any of his Majesty's dominions.—To the end that the course of justice for the future, may be legally, equally and impartially administered to all his Majesty's subjects, as well inhabitants as strangers.—Know all men by these presents, that I, Richard Nicolls, Deputy Governor to his Royal Highness, the Duke of York, by virtue of his Majesty's letters patent, bearing date the 12th day of March, in the sixteenth year of his Majesty's reign, do ordain, constitute and declare, that the inhabitants of New York, New Harlem, and all other his Majesty's subjects, inhabitants upon this island, commonly called and known by the name of Manhattan Island, are and shall be forever accounted, nominated and established, as one body politic and corporate, under the government of a Mayor, Aldermen and Sheriff; and I do by these presents constitute and appoint, for one whole year, commencing from the date hereof, and ending the 12th day of June, which shall be in the year of our Lord, 1666; Mr. Thomas Willet to be Mayor, Mr. Thomas De La Vall, Mr. Olaffe Stevenson, Mr. John Brugges, Mr. Cornelius Van Ruyven and Mr. John Lawrence to be Aldermen; and Mr. Allard Anthony to be Sheriff; giving and granting to them, the said Mayor and Aldermen, or any four of them, whereof the said Mayor or his Deputy shall be always one, and upon equal division of voices, to have always the casting and decisive voice, full power and authority to rule and govern as well all the inhabitants of this Corporation as any strangers, according to the general laws of this government, and such peculiar laws as are or shall be thought convenient or necessary for the good and welfare of this his Majesty's Corporation; as also to appoint such under officers as they shall judge necessary for the ordinary execution of justice. And I do hereby strictly charge and command all persons to obey and execute, from time to time, all such warrants, orders and constitutions as shall be made by the said Mayor and Aldermen, as they will answer the contrary at their utmost peril; and for the due administration of justice, according to the form and manner prescribed in this commission by the Mayor, Aldermen and Sheriff these presents shall be to them, and every of them, a sufficient warrant and discharge in that behalf.

Given under my hand and seal, at Fort James, in New York, this 12th day of June, 1665.

RICHARD NICOLLS.

3. Petition of the Mayor and Common Council of New York for a New Charter, 1683.

In the course of time the very brief and general terms of the Nicolls charter proved insufficient for the needs of the growing settlement. There was also doubt as to the validity of the charter. This led to the application by the mayor, aldermen, and commonalty of the City of New York to Governor Thomas Dongan for a charter from the Duke of York.

SOURCE—*Documents Relative to the Colonial History of the State of New York* (Albany, 1853), III, 337-339. The notes are those given in the *Documents*.

To the Right Honorable Collⁿ Thomas Dongan Esq^r Lieutennant & Governor & Vice Admirall under his Royall Highness James Duke of York and Albany &^c of New York and Dependencyes in America.

The humble peticôn of the Mayor and Aldermen & Comonalty of the Citty of New York.

Sheweth

That this Citty hath had and enjoyed seuerall ancient Customes Priviledges and Immunityes which were confirmed and granted to them by Collⁿ Richard Nicholls the late Governor of this Province by authority under His Royall Highness A^o 1665 who incorporated the Inhabitants thereof New Harlem and all other Inhabitants¹ on the Island Manhattans whereon this Citty standeth as one body Politique and Corporate under the Government of a Mayor Aldermen an Sheriff in which manner it hath continued in practice ever since and hath had, used and enjoyed the Customes, Libertyes and priviledges following, Viz^t

1. That all the Inhabitants on the Island Manhattans was under the Govern^t of the Citty of New York.

¹“All others inhabiting.” *Petition in Council Minutes*, V.17.—EDITOR.

2. That the Governing of the said Citty was by seven Magistrates and a Schout formerly called Burgemaster and Schepen now one Mayo^r six Aldermen and one Sheriffe.

3. These Magistrates had power to appoint all inferior Officers as Constables and Overseers, Undersheriffs, Cryers, and Marshalls throughout the whole Island and also did make such peculiar Lawes¹ and Orders as they judge convenient for the well governeing the inhabitants of the s^d Corporacôn and held once in fourteen dayes or oftener on Speciall request² or occasion a Court of Judicature att the Citty Hall where they did heare and determine all causes and Matters whatsoever brought before them by Jury³ or in Equity as the cause required The Mayor or chief Magistrate had power to determine all matters that came before him under forty shillings without appeale or any other process then a verball heareing of parties.

4. The Sheriffs served all writts, summons, and attachments within the Limmitts of the Corporacôn and officiated as Watter-bayliff on the water.

5. They had theire owne Clerke and kept the Records of the Citty distinctly.

6. This Citty was the Staple porte of the whole Province where all merchandize was Shipped and unloaden.

7. None were to bee esteemed freemen of the citty but who were admitted by the Magistrates aforesaid and none before such admission to sell by Retayle or Exercise any handicraft trade or occupacôn and every merchant or shopkeeper was to pay for the publique use of the Citty three pounds, twelve shillings, Every handy crafts man one pound foure Shillings on being made free.

8. Noe ffreeman of the citty was to bee arrested or to have their goods attached unless it was made to appeare that they were departeing or conveying away their Estates to defraude their Creditors.

9. Noe person was admitted to trade up Hudsons River except hee was a freeman and had been an actuall inhabitant in this Citty for the space of three yeares, And if any ffreeman should bee absent out of the Citty the space of Twelve moneths and not keepe fire and candle and pay Scott and lott should loose his ffreedome.

10. All that Inhabite up Hudson's River were forbid to trade over sea.

¹ "By Laws." *Ibid.*

² "Desire." *Ibid.*

³ "Juries." *Ibid.*

11. Noe flower was to be bolted or packed or biskett made for Exportacôn butt in the Citty of New York being for the encouragm^t of trade and keepeing up the Reputacôn of New York flower which is in greater request in the West Indies and the only support and maintennance of the Inhabitants of this Citty and if not confirmed to them will ruine and depopulate the same.

12. That the said Citty had a Comôn Seale to serve for the sealeing of all and singular their affaires, matters and businesses touching the said Corporacôn.

All which said ancient Customes, Priviledges and Libertyes wee the said Mayor and Aldermen in behalfe of themselves and the Cittizens of the said Citty doe humbly present and make knowne to your Hono^r Humbly beseeching yo^r Hono^r in their behalfts to Interceed and procure that the same bee confirmed to them by Charter from his Royall Highnesse with these Addicôns following viz^t

1. That the said Corporacôn bee divided into six wards.

2. That the ffreemen in each ward doe once every yeare elect their own Officers that is to say Aldermen, Common Council men, Constable, Overseers of the poore, Assessors, Scavengers, Questmen, or other officers usefull and necessary for the said Corporacôn and Ward.

3. That there bee a Mayor and a Recorder who with the said six Aldermen and six Comôn Councill men shall represent the whole body of the said Citty and Corporacôn and shall have power to make peculier lawes¹ for the good government and support thereof.

4. That a Mayor bee appointed every yeare by the Governor and Councill and to bee one of the Aldermen soe chosen as aforesaid.

5. That all Magistrates soe chosen shall not be admitted to the Execucôn of their offices untill sworne before the Governor and Councill.

6. That the Recorder bee appointed by the Governor and Councill who shall bee Judge of the Citty and Corporacôn and bee aydeing and assisteing the Mayor and Aldermen & Cômôn Councill in all matters that relate to the well beinge and supporte thereof.

7. That a Sheriffe bee annually appointed by the Governor and Councill.

8. That the Coroner & Town Clerk be appointed by the Governor & Council.²

¹“Laws and Orders.” *Council Minutes*, V.18.—EDITOR.

²This clause is omitted in the London MS. It is inserted here from the copy of the Petition in the *Council Minutes*.—EDITOR.

9. That the Mayo^r Recorder, Aldermen and Comon Councill doe appoint a Threasurer for collecting and payeing all publike debts and Revenues.

This and whatever else yo^r honor or his Royall Highness shall think fitt, necessary & convenient for the good rule, order and welfare of this Citty and Corporacôn yo^r petitioners humbly praye may be graunted and confirmed to them in as full and ample manner and forme as His Majesty has been graciously pleased to graunt to other Corporacôns within his Realme of England for the Obteyning of which they again humbly begg Yo^r Hono^r to become theyr supplicant whose kyndeness and service therein shall be most thankfully acknowledged.

And as in duty bound Yo^r peticônners shall ever pray &^c

———— BEEREMUTH ¹

JOHANNES VAN BRUG

JOHN LAWRENCE

PIETER JACOB MARIUS

JA. GRAHAM

CORN STEENEWIJCK

N. BAYARD

New Yorke. Novemb^r 9th 1683.

By order of the above

JOHN WEST Cl:

4. The Dongan Charter of New York, 1686.

Governor Dongan, after a delay of about two years and a half, answered the petition of the corporation of New York by granting a new charter. This charter is an interesting example of the legal draftsmanship of the eighteenth century. It is extremely verbose and almost innocent of punctuation. The charter, however, provided an effective form of government and granted to the city important powers and privileges. Its provisions indicate the extent of the city's functions in the seventeenth century. Strangely enough, there was, from the very beginning, doubt as to the validity of this charter and, at the request of the city authorities, it was re-granted, with some slight

¹“WILL. BEECKMEN:” he was Deputy Mayor; Mr. STEENWYCK being the Mayor of the City at the date of this Petition.—EDITOR.

changes, by Governor Montgomery in 1730. The Montgomery charter, in substance, remained in force until 1830.

SOURCE—*Colonial Laws of New York* (Albany, 1896), I, 181-195.

THOMAS DONGAN Leivt. Governour and Vice Admirall of New Yorke and its Dependencies under his Majesty James the Second by the Grace of God of England, Scotland, France & Ireland King Defender of the faith Supream Lord and Proprietor of the Colony and Province of New Yorke, and its Dependencies in America &c To all to whom this shall come SENDETH GREETING WHEREAS the Citty of New Yorke is an antient Citty within the said Province And the Cittizens of the said Citty have antiently been a Body Politique and Corporate and the Cittizens of the said Citty have held used and Enjoyed as well within the same as else where in the said Province Diverse and Sundry Rights Libertyes Privilidges ffranchises ffree Customes Preheminences Advantages Jurisdiccons Emoluments and Immunityes as well by prescripcon as by Charter Letters Patents, Grants and Confirmacons not only of Divers Governours and Commanders in Cheife in the said Province butt alsoe of Severall Governours Directors Generalls and Commanders in Chiefe of the Neither Dutch Nation whilst the same was or has beene under their Power and Subjeccon AND WHEREAS Divers Lands Tennements and Heriditaments Jurisdiccons Libertyes Immunityes and Privilidges have heretofore been Given and Granted or menconed to be Given and Granted to the Cittizens and Inhabitants of the said Citty sometimes by the name of Scout Burgomasters and Schepens of the Citty of New Amsterdam and sometimes by the Name of the Mayor Aldermen and Commonality of the Citty of New Yorke Sometimes by the name of the Mayor, Aldermen and Sheriffe of the Citty of New Yorke sometimes by the Name of the Mayor and Aldermen of the Citty of New Yorke and by Diverse Other Names as by their Severall Letters Pattents Charters Grants Writeings Records and Immunityes amongst other things may more fully Apppeare AND WHEREAS the Cittizens and Inhabitants of the said Citty have erected Built and Appropriated at their owne Proper Costs and Charges several Publique Buildings Accomodations and Conveniences for the said Citty (that is to say) the Citty Hall or State House with the Ground thereunto belonging two Markett Houses the Bridge into the Dock the Wharfes or Dock with their Appurtenances and the New Buriall place without the Gate of the Citty

and have Established and Settled one fferry from the said Citty of New Yorke to Long Island for the Accomodacon and Conveniency of Passengers the said Cittizens and travelers AND WHEREAS Severall the Inhabitants of the said Citty and of Manhatons Island Doe hold from and under his most Sacred Majesty Respectively as well by Severall and Respective Letters Pattents Grants Charters and Conveyances made & Granted by the late Leivtenants Governours or Commanders in Cheife of the said Province as otherwise severall and Respective Messuages, Lands Tenements and Heriditaments upon Manhatans Island and in the Citty of New Yorke aforesaid and that as well the said Mayor Aldermen and Commonalty of the said Citty and there Successors as also the Inhabitants of the said Manhatans Island and Citty of New Yorke aforesaid and there Heires and Assignes respectively may hold Exercise and Enjoye not only such and the same Libertyes Privilidges, ffranchizes, Rights, Royalties, ffree Customes, Jurisdiecons and Immunities as they have Antiently had used held and Enjoyed butt alsoe such Publique Buildings Accomodacons, Conveniencyes Messuages, Tennements, Lands and Heriditaments in the said Citty of New Yorke and upon Manhatans Island aforesaid, which as aforesaid have been by the Cittizens and Inhabitants Erected and Built or which have as aforesaid been held Enjoyed Granted and Conveyed unto them or any of them respectively KNOW YEE therefore that I the said Thomas Dongan by Virtue of the Comicon and Authority unto me Given and Power in me Resideing at the humble Peticon of the now Mayor Aldermen and Commonalty of the said Citty of New Yorke and for Diverse other Good Causes and Consideracons me thereunto moveing have Given Granted Rattified and Confirmed and by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires Successors and Assignes Doe Give Grant Rattify and Confirme unto the said Mayor Aldermen and Commonalty of the said Citty all and every such and the same Libertyes Privilidges and ffranchizes Rights Royalties, ffree Customes Jurisdiecons and Immunities which they by the Name of the Mayor Aldermen and Commonalty or otherwise have Antiently had held used or Enjoyed PROVIDED Alwayes that none of the said Libertyes Privilidges ffranchizes Rights ffree Customes Jurisdiecons or Immunities be inconsistant with or Repugnant to the Lawes of his Majestyes Kingdome of England or any other the Laws of the Generall Assembly of this Province and the aforesaid Publique Buildings Accommodacons

and Conveniencies in the said Citty (that is to say) the aforesaid Citty Hall or State House with the Ground thereunto belonging two Markett Houses the Bridge into the Dock the wharfes or Dock the said New Buriall Place and the aforementioned fferry with their and every of their Rights Members and Appurtenances together with all the Proffitts Benefitts and Advantages which shall and may Accrue and Arrise att all times hereafter for Dockage or Wharfage within the said Dock with all and Singular the Rents Issues Proffitts Gaines and Advantages which shall or may Arrise Grow or Accrue by the said Citty Hall or State House & Ground thereunto belonging markett Houses Bridge Dock Burying Place fferry and other the above menconed Premissess or any of them and also all and every the Streets Lanes Highwayes & Alleys within the said Citty of New Yorke and Manhatans Island aforesaid for the Publique use and Service of the said Mayor Aldermen and Comonalty of the said Citty and of the Inhabitants of Manhatans Island aforesaid and travellers there together with full Power Lycence and Authority to the said Mayor Aldermen and Comonalty and their Successors forever to Establish Appoint order and Direct the Establishing makeing Laying out Ordering Amending & Repaireing of all Streets Lanes Allyes Highwayes Water Courses fferry and Bridges in and through out the said Citty of New Yorke and Manhatans Island aforesaid Necessary Needfull and Convenient for the Inhabitants of the said Citty and Manhatans Island aforesaid and for all Travellers and Passengers there PROVIDED alwayes that this said Lycence soe as above Granted for the Establishing makeing and Layeing out of Streets Lanes Alleys Highwayes fferry and Bridges be not Extended or be Construed to extend to the takeing Away of any Person or Persons Right or Property without his her or their Consent or by some knowne Law of the said Province AND for the Consideracons aforesaid I Doe Likewise Give Grant Rattifie and Confirme unto all and Every the Respective Inhabitants of the said Citty of New Yorke and of Manhatans Island aforesaid and their Severall and Respective Heires and Assignes all and every the Severall & Respective Messuages Tenements Lands and Hereditaments Scituate Lyeing and being in the said Citty and Manhatans Island aforesaid to them Severally & Respectively Granted Conveyed and Confirmed by any the late Governours Leiutenants or Commanders in cheife of the said Province or by any of the former Mayors or Deputy Mayors and Aldermen of the said Citty of N: York by Deed Grant Conveyance

or otherwise howsoever to hold to their Severall and Respective Heires and Assignes forever. AND I Doe by these p'sents Give and Grant unto the said Mayor Aldermen and Comonalty of the said Citty of New Yorke all the wast Vacant unpattented and Unappropriated Lands Lyeing and being within the said Citty of New Yorke and on Manhatans Island aforesaid Extending and Reaching to the Low Water marke in by and through all Parts of the said Citty of New Yorke and Manhatans Island aforesaid together with all Rivers Rivoletts Coves Creeks Ponds Waters and Water Courses in the said Citty and Island or either of them not heretofore Given or Granted by any of the former Govern's Leivetenants or Commanders in Cheife under their or some of their Hands and Seales or Seale of the Province or by any of the former Mayors or Deputy Mayors and Aldermen of the said Citty of New Yorke to some Respective Person or Persons late Inhabitants of the said Citty of New Yorke or Manhatans Islands or of other Partes of the said Province AND I Doe by these p'sents Give Grant and Confirme unto the said Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successors forever the Royalties of Fishing Fowleing, Hunting, Hawkeing Mineralls and other Royalties and Privilidges belonging or Appurtaineing to the Citty of New Yorke and Manhatans Island aforesaid (Gold and Silver Mines only excepted) TO have hold and Enjoye all and Singular the Premissess to the said Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successors for ever RENDRING and Paying therefore unto his Most Sacred Majesty his Heires Successors and Assignes or to such Officer or Officers as shall be Appointed to Receive the Same Yearly forever hereafter the Annuall Quitt Rent or Acknowledgment of one Bever skin or the Value thereof in Currant Mony of this Province in the said Citty of New Yorke on the five and twentieth day of March Yearly forever AND Moreover I will and by these Presents Doe Grant Appoint & Declare that the said Citty of New Yorke and the Compasse Precincts and Limittes thereof and the Jurisdiccōn of the same shall from henceforth extend and Reach it selfe and may and shall be able to Reach forth and Extend it selfe as well in Length and in Breadth as in Circuite to the furthest extent of and in and throughout all the said Island Manhatans and in and upon all the River Rivoletts Coves Creeks Waters and Water Courses belonging to the same Island as far as Low Water marke AND I Doe also for and on the behalfe of his most Sacred Majesty

aforesaid his Heires and Successors firmly enjoyne and Command that the aforesaid Mayor Aldermen and Comonalty of the Citty aforesaid and their Successors shall and may freely and Quietly have hold use and Enjoy the aforesaid Libertyes Authorities Jurisdiccions franchises Rights Royalties Priviledges Exemptions Lands Tenements Hereditaments and Premises aforesaid in manner and forme aforesaid According to the Tenour and effect of the aforesaid Grants Pattents Customes and Letters Pattents of Grant and Confirmation without the Let Hindrance or Impediment of me or any of my Successors Governours Leivts or other Officers whatsoever AND also I Doe for and on the behalfe of his most Sacred Majesty aforesaid his Heires and Successors Grant to the Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successors by these presents that for the better Governmt of the said Citty Libertyes and Precincts thereof their shall be forever hereafter within the said Citty a Mayor and Recorder Towne Clerke and six Aldermen and six Assistants to be Appointed Nominated Elected Chosen and Sworne as hereinafter is particularly and Respectively menconed who shall be forever hereafter Called the Mayor Aldermen and Commonaltye of the City of New Yorke and that their shall be forever one Chamberlaine or Treasurer one Sherriffe one Coroner one Clerke of the Markett one High Constable seven Sub constables and one Marshall or Serjant at Mace to be Appointed Chosen and Sworne in manner hereinafter menconed AND I Doe by these Presents for and on the behalfe of his Most Sacred Majesty aforesaid his Heires Successors and Assignes Declare Constitute Grant and Appointe that the Mayor Recorder Aldermen and Assistants of the said Citty of New Yorke for the time being and they which hereafter shall be the Mayor Recorder and Aldermen and Assistants of the said Citty of New Yorke for the time being and their Successors forever hereafter be and shall bee by force of these Presents one Body Corporate and Politique in Deed fact and name by the Name of the Mayor Aldermen and Commonalty of the Citty of New Yorke And them by the Name of the Mayor Aldermen And Comonaltye of the Citty of New Yorke one Body Corporate & Politique in Deed fact and name I Doe Really and fully Create Ordaine make Constitute and Confirme by these Presents And that by the name of the Mayor Aldermen and Comonalty of the Citty of New Yorke they may have Perpetuall Succession and that they and their Successors forever by the name of Mayor Aldermen and Comonaltye of the Citty of New Yorke be and shall be forever

hereafter Persons able and in Law Capable to have Gett Receive and Possesse Lands Tennements Rents Libertyes Jurisdiccons ffranchises and Hereditaments to them and their Successors in fee simple of for terme of life lives or yeares or otherwise and also Goods & Chattles and also other things of what Nature kind or Quality soever and also to Give Grant Lett sett and assigne the same Lands Tenements Heridataments Goods and Chattles and to Doe and Execute all other things about the same by the Name aforesaid And also that they be & forever shall bee hereafter Persons Able in Law Capable to Plead and be impleaded answer & bee answered unto Defend and be Defended in all or any the Courts of his said Majestye & other Places whatsoever and before any Judges Justices and other Person or Persons whatsoever in all and all manner of Accons Suites Complaints Demands Pleas Causes and matters whatsoever of what Nature kind or Quality soever in the same and in the Like Manner and forme as other People of the said Province being Persons able and in Law Capable may Plead and be impleaded answer and be answered unto Defend and be Defended by any Lawfull wayes and meanes whatsoever AND that the said Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successor's shall and may for ever hereafter have one Comon Seale to Serve for the Sealing of all and Singular their Affaires and Buisnesses touching or Concerning the said Corporacon AND it shall and may be Lawfull to and for the said Mayor Aldermen and Comonaltye of the said Citty of New Yorke and their Successors as they shall see Cause to breake Change Alter and new make their said Comon Seale when and as often as to them it shall seem Convenient. . . .¹ AND I Doe by these Presents Grant to the said Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successors that the Mayor Recorder Aldermen and Assistants of the said Citty for the time being or the Mayor Recorder and any three or more of the Aldermen and any three or more of the Assistants for the time being be and shall be Called the Comon Councell of the said Citty And that they or the Greater Parte of them shall or may have full Power and Authority by Virtue of these Presents from time to time to Call and hold Comon Councell within the Comon Councell House or Citty Hall of the said Citty And their as occasion shall be to make Laws Orders Ordinances and Constitutions in Writeing and to add Alter

¹ The names of the persons appointed to the offices enumerated above are omitted.

Diminish or Reforme them from time to time as to them shall seem Necessary and Convenient (not Repugnant to the Perrogative of his most Sacred Majesty aforesaid his Heires & Successors or to any the Laws of the Kingdome of England or other the Laws of the Generall Assembly of the Province of New Yorke for the Good Rule Oversight Correction and Govermt of the said Citty and Libertyes of the same & of all the Officers thereof, And for the Severall Tradsmen Victuallers Artificers and of all other the People and Inhabitants of the said Citty Libertyes and Precinets aforesaid and for the better Preservacon of Govermt and Disposall of all the Lands Tennements and Hereditaments Goods and Chattles of the said Corporacon which Laws Orders Ordinances and Constitutions shall be Binding to all the Inhabitants of the said Citty Libertyes and Precinets aforesd and which Laws Orders Ordinances and Constitutions soe by them made as aforesaid shall be and Remaine in force for the space of three Months and noe longer Unlesse they shall be Allowed of and Confirmed by the Governor and Councell for the time being AND I doe further on the behalfe of his Sacred Majesty aforesaid his Heires and Successors Appoint & Grant that the said Comon Councell of the said Citty for the time being as often as they make Ordaine and Establish such Laws Orders Ordinances and Constitucons as aforesaid shall or may make Ordaine Limitte Provide sett impose and Tax Reason able fines and Amerciaments Against and upon all Persons Offending Against such Laws Orders Ordinances and Constitucons as aforesaid or any of them to be made Ordeined and Established as aforesaid and the same fines and Amerciaments shall and may require Demand Levy take and Receive by Warrants under the Comon Seale to and for the use and behoofe of the Mayor Aldermen and Comonalty of the said Citty and their Successors either by Distresse and Sale of the Goods and Chattles of the Offender therein if such Goods and Chattles may be found within the said Citty Libertyes and Precinets thereof Rendring to such Offendor and Offenders the overplus or by any other Lawfull wayes or meanes whatsoever AND I Doe by these Presents appoint and Ordeine the Assigneing Naming and Appointment of the Mayor and Sherriffe of the said Citty that it shall bee as followeth (vizt) upon the feast day of St. Michael the Archangell Yearly the Leivetenant Governour or Commander in Chiefe for the time being by and with the Advice of his Councell shall Nominate and Appointe such Person as he shall thinke fitte to be Mayor of the said Citty for the Yeare next ensue-

ing and one other Person of Sufficient Ability in Estate and of Good Capacity in Understanding to be Sherriffe of the said Citty of New Yorke for the Yeare next Ensueing AND that such Person as shall be Named Assigned and Appointed Mayor and such Person as shall be Named Assigned and Appointed Sherriffe of the said Citty as aforesaid shall on the fouertenth Day of October then next following take their Severall and Respective Corporall Oaths before the Governour and Councell for the time being for the Due execucon of their Respective Offices as aforesaid and that the said Mayor and Sherriffe soe to be Nominated Assigned & Appointed as aforesaid shall Remaine and Continue in their said Respective Offices untill another fitt Person shall be Nominated Appointed and Sworne in the Place of Mayor and one other Person Shall be Nominated and Appointed in the Place of Sherriffe of the said Citty in Manner aforesaid AND further that According to the now Usage and Custome of the said Citty the Recorder Towne Clerke and Clerke of the Markett of ye. s'd City shal be psons of Good Capacity & Understanding & such psons as his most Sacred Maty aforesaid His Heires & Successors shall in ye. Sd. Respective Offices of Recorder Towne Clerk & Clerk of ye Markett Appoint and Commissionate and for Defect of such appointment and Commissionateing by his most Sacred Majesty aforesaid his Heires and Successors to be such Person as the Leivt. Governour or Commander in Cheife of the said Province for the time being shall appointe and Commissionate which Persons soe Commissionated to the said Offices of Recorder Towne Clerke and Clerke of the Markett shall have hold and enjoye the said Offices According to the Tenour and effect of their said Commissions and not otherwise AND further that the Recorder Towne Clerk Clerke of the Markett Aldermen Assistants, Chamberlain High Constable Petty Constables and all other Officers of the said Citty before they or any of them shall be admitted to enter upon and execute their Respective Office shall be Sworne faithfully to execute the Same before the Mayor or any three or more of the Aldermen for the time being AND I Doe by these Presents for and on the behalfe of his Most Sacred Majesty his Heires and Successors Grant and Give Power and Authority to the Mayor and Recorder of the said Citty for the time being to Administer the same respective Oaths to them Accordingly AND further I doe by these Presents Grant for and on the behalfe of his most Sacred Majesty aforesaid his Heires and Successors that the Mayor and Recorder of the said Citty for the time being and three or

more of the Aldermen of the said Citty not exceeding five shall be Justices and keepers of the Peace of his most Sacred Majesty his Heires and Successors and Justices to heare & Determine Matters and Causes within the said Citty and Libertyes and Precincts thereof AND that they or any three or more of them whereof the Mayor & Recorder or one of them for the time being to be there shall and may forever hereafter have Power and Authority by Virtue of these Presents to Hear and Determine all and all manner of Petty Larcenyes Riots Routs Oppressions Extorcons and other trespasses and Offences whatsoever within the said Citty of New Yorke and the Libertyes & Precincts aforesaid from time to time Arriseing and Happening and which Arrise or happen and any ways belong to the Office of Justice of the Peace and the Correccion and Punishment of the Offences aforesaid and every of them according to the Laws of England and the Laws of the said Province and to Doe and Execute all other things in the said Citty Libertyes and Precincts aforesaid soe fully and in Ample Manner as to the Comiconers Assign and to be Assigned for the keeping of the Peace in the said County of New Yorke doth or may belong AND moreover I Doe by these Presents for and on the behalfe of his Most Sacred Majesty aforesaid his Heires and Successors Appoint that the Aldermen Assistants High Constable and Petty Constables within the said Citty be Yearly Chosen on the feast Day of St. Michael the Archangell for ever (vizt) one Alderman one Assistant and one Constable for each Respective Ward and one Constable for each Division in the out Ward in such Publique Place in the said Respective Wards as the Aldermen for the time being for each Ward shall Direct and Appoint and that the Aldermen Assistants and Petty Constables be Chosen by Majority of Voices of the Inhabitants of each ward and that the High Constable be Appointed by the Mayor of the said Citty for the time being AND that the Chamberlaine shall be Yearly Chosen on the said ffeast Day in the Citty Hall of the said Citty by the Mayor and Aldermen and Assistants or by the Mayor or three or more of the Aldermen and three or more of the Assistants of the said Citty for the time being AND I Doe by these Presents Constitute and Appoint the said John West to be the Present Towne Clerke, Clerke of the Peace and Clerke of the Court of Pleas to bee holden before the Mayor Recorder and Aldermen within the said Citty and the Libertyes and Precincts thereof AND further I Doe by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires and

Successor's require and Strictly Charge and Comand that the Sherriffe Towne Clerke Clerke of the Peace High Constable Petty Constables and all other Subordinate Officers in the said Citty for the time being and every of them Respectively jointly and Severally as Cause shall require shall attend upon the said Mayor Recorder and Aldermen of the said Citty for the time being and every or any of them According to the Duty of their Respective Places in and about the Executeing of such Comands, Precepts Warrants and Processe of them and every of them as belongeth and Appertaineth to be done or Executed AND that the aforesaid Mayor Recorder and Aldermen and every of them as Justices of the Peace for the time being by their or any of their Warrants all and every Person or Persons for high Treason or Petty Treason or for Suspicion thereof or for other felonies whatsoever and all Malefactors and Disturbers of the Peace and others Offenders for other Misdemeanors who shall be Apprehended within the said Citty or Libertyes thereof shall and may send and Comitt or Cause to be Sent and Committed to the Comon Goale of the said Citty there to Remaine & be kept in safe Custody by the keeper of the said Goale or his Deputy for the time being untill such Offender and Offenders shall Lawfully be delivered thence AND I Doe by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires and Successors Charge and require the keeper and keepers of the said Goale for the time being and his and their Deputy and Deputyes to Receive take and in Safe Custody to keepe all and Singular such Person and Persons soe Apprehended or to be Apprehended sent & Committed to the said Goale by Warrant of the said Justices of any of them as aforesaid untill he and they soe Sent and Comitted to the said Goale shall from thence be Delivered by Due Course of Law AND further I Doe Grant and Confirme for and on the behalfe of his most Sacred Majesty aforesaid his Heires and Successors that the said Mayor of the said Citty for the time being and noe other (according to the usage and Custome Practised in the said Citty of New Yorke in the times of my Predecessors the Severall Leivtenants Governours and Commanders in Cheife of this Province shall have Power and Authority to give and Grant Lycences Annually under the Publique Seale of the said Citty to all Tavern keepers Inkeepers Ordinary keepers Victuallers and all Publique Sellers of Wine Strong waters Sider Beer or any other Sort of Liquors by Retaile within the Citty aforesaid Manhatan Island or the Libertyes and Precincts thereof AND that it shall

and may be Lawfull to and for the said Mayor of the said Citty for the time being to aske Demand and Receive for such Lycence by him to be Given and Granted as afores'd such Sume or Sumes of Mony as he and the Person to whom such Lycence shall be Given or Granted shall agree for not exceeding the Sume of thirty Shillings for each Lycence ALL which Mony as by the said Mayor shall be Soe Received shall be used and Applied to the Publique use of the said Mayor Aldermen and Commonalty of the said Citty of New Yorke and their Successors without any Account thereof to be Rendred made or Done to any of the Leivtenants or Governours of this Province for the time being or any of their Deputyes AND know yee that I for the better Government of the said Citty and for the welfare of the said Cittizens Tradesmen and Inhabitants thereof Doe by these Presents for and on the behalfe of his most Sacred Majesty his Heires and Successors Give and Grant to the said Mayor Aldermen and Comonalty of the said Citty and their Successors that the Mayor Recorder and Aldermen or the Mayor and any three or more of the Aldermen for the time being shall from time to time and att all times hereafter have full Power and Authority under the Comon Seale to make ffree Cittizens of the said Citty and Libertyes thereof and noe Person or Persons whatsoever other then such ffree Cittizens shall hereafter use any art trade Mistory or Mannuall Occupacon within the said Citty Libertyes and Precincts thereof Saveing in the times of faires there to be kept and Dureing the Continuance of such faires only AND in case any Person or Persons whatsoever not being ffree Cittizens of the said Citty as aforesaid shall att any time hereafter use or Exercise any Art Trade Mistory or Mannuall occupacon or shall by himselfe themselves or others sell or expose to sale any Manner of Merchandize or Wares whatsoever by Retaile in any House Shopp or Place or Standing within the said Citty or the Libertyes or Precincts thereof noe fair being then kept in the said Citty and shall persist therein after warning to him or them Given or left by the Appointmt of the Mayor of the said Citty for the time being at the Place or Places where such Persons or Persons shall soe use or Exercise any Art Trade Mistory or Mannuall occupacon or shall Sell or expose to Sale any Wares or Marchandizes as aforesaid by Retaile then it shall be Lawfull for the Mayor of the said Citty for the time being to Cause such Shopp Windows to be Shutt up and also to impose such Reasonable fine for such Offence not Exceeding five Pounds for every Respective Offence

and the same fine and fines so imposed to Levy and take by War-rant under the Comon Seale of the said Citty for the time being by Distresse and Sale of the Goods and Chattles of the Person or Persons soe Offending in the Premissess found within the Libertyes or Precincts of the said Citty Rendring to the Party or Partyes the overplus or by any other Lawfull wayes or meanes whatsoever to the only use of the said Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successors without any Account to be Rendred made or Done to the Leivtenants Governours or Command's in Cheife of this Province for the same PROVIDED that noe Person or Persons shall be made free as aforesaid butt such as are his Majestys Naturall Borne Subjects or such as shall first be Naturalized by Act of Generall Assembly or shall have obtained Letters of Denization under the hand of the Leivtenant Governour or Commander in Cheife for the time being and Seale of the Province AND that all Persons to be made free as aforesaid shall and Doe pay for the Publique use of the said Mayor Aldermen and Comonalty of the sd Citty such Sume & Sumes of Mony as heretofore hath been used and Accustomed to be paid and Received on their being Admitted ffree-men as aforesaid Provided it is not Exceeding the sume of five Pounds AND further I Doe by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires and Successors Grant to the Mayor Aldermen and Comonalty of the said Citty that they and their Successors be forever Persons able and Capable and shall have Power to purchase have take and Possesse in ffee Simple Lands Tennemts Rents and other Possessions wthin or without the same Citty to them and their Successors for ever soe as the same Exceed not the Yearely vallue of one thousand Pounds per annum the Statute of Mortmaine or any other Law to the Contrary Notwithstanding and the same Lands Tennements Hereditaments and Premisses or any Parte thereof to Demise Grant Lease Settover Assigne and Dispose at their owne Will and Pleasure and to make Seale and Accomplish any Deed or Deeds Lease or Leases Evidences or Writeings for or Concerning the same or any Parte thereof which shall happen to be made and Granted by the said Mayor Aldermen & Comonalty of the said Citty for the time being AND further I doe by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires and Successors Grant to the said Mayor Aldermen and Comonalty that they and their Successors shall and may forever hereafter hold

and keep wthin the said Citty in every weeke of the yeare three Markett Days the one upon Tuesday the other upon Thursday and the other on Saturday Weekly forever AND alsoe I Doe by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires & Successors Grant to the Mayor Aldermen and Comonalty of the said Citty that they and their Successors and Assignes shall and may att any time or times hereafter when it to them shall seem fitt & Convenient take in fill and make up and Lay out all and Singular the Land and Ground in and about the said Citty and Island Manhatans and the same to Build upon or make use of in any other manner or way as to them shall seem fitt as farr into the Rivers thereof and that Encompasse the same as Low Water marke aforesaid AND I Doe by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires & Successors Give and Grant unto the aforesd & Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successors that they and their Successors shall and may have hold & keep within the said Citty and Libertyes and Precincts thereof in every weeke in every Yeare for ever upon Tuesday one Court of Common Pleas for all Accons of Debt Tresspasse Tresspasse upon the Case Detinue Ejectments and other Personall Accons and the same to be held before the Mayor Recorder and Aldermen or any three of them whereof the Mayor or Recorder to be one who shall have Power to hear and Determine the same Pleas and Accons According to the Rules of the Comon Law Acts of Generall Assembly of the said Province AND I Doe by these Presents for and on the behalfe of his most Sacred Majesty aforesaid his Heires and Successors Grant to the said Mayor Aldermen and Comonalty of the said Citty of New Yorke and their Successors that the said Mayor Aldermen and Comonalty of the said Citty and their Successors shall have & Enjoye all the Privilidges ffranchizes and Powers that they have and use or that any of their Predecessors at any time within the space of twenty Yeares last past had tooke or enjoyed or ought to have had by Reason or under pretence of any former Charter Grant Prescription or any other Right Custome or usage although the same have been forfeit or Lost or have been ill used or not used or Abused or Discontinued Albeit they be not Perticularly menconed and that noe Officer shall Disturb them therein under any Pretence whatsoever not only for their future but their Present Enjoyment thereof PROVIDED alwayes that the said Privilidges ffranchises and Powers be not inconsistant with or

Repugnant to the Laws of his Matis Kingdom of England or other the Laws of the Generall Assembly of this Province as aforesaid and Saveing to his most Sacred Majesty aforesaid his Heires Successors and Assignes and the Leivts Governours and Commanders in Cheife and other officers under him and them in ffortt JAMES in or by the Citty of New Yorke and in all the Libertyes Boundaries Extents Privilidges thereof for the Maintenance of the said ffort and Garrison there all the Right use title and Authority which they or any of them have had used or Exercised there and also one Messuage or tennemt next the Citty Hall and one Messuage by the ffortt now in the Possession of Thomas Coker Gent the Peice of Ground by the Gate Called the Governo's Garden and the Land without the Gate Called the Kings ffarme with the Swamp next to the same Land by the ffresh water and Saveing the Severall Rents and Quitt Rents Reserved Due and Payable from Severall Persons inhabiting within the said Citty and Island Manhatans by Virtue of former Grants to them made and Given and Saveing to all other Persons Bodyes Pollitique and Corporate their Heires Successors and Assignes all such Right Title and Claime Possessions Rents Services Comons Emoluments Interest in and to any thing which is theires (save only the ffranchizes aforesaid) in as ample manner as if this Charter had not been made AND further I Doe Appoint and Declare that the Incorporacon to be founded by this Charter shall not att any time hereafter Doe or Suffer to be Done any thing by means whereof the Lands Tennements or Hereditaments Stock Goods or Chattles thereof or in the Hands Custody Possession of any the Cittizens of the said Citty such as have been Sett lett Given Granted or Collected to and for Pious and Charitable uses shall be wasted or Misemployed Contrary to the trust or intent of the founder or Giver thereof and that such and noe other Construction shall be made thereof then that which may tend most to Advantage Religion Justice and the Publique Good and to Suppress all Acts and Contrivances to be invented or Putt in use Contrary thereunto IN WITNESSE whereof I have Caused these Presents to be Entred in the Secretarys Office and the Seale of the said Province to be hereunto Affixed this Seaven & twentyth Day of April in the Second yeare of the Reigne of his most Sacred Majesty aforesaid and in the Yeare of our Lord God one thousand six hundred and Eighty Six

THOMAS DONGAN.

5. The Charter of the City of Philadelphia, 1701.

William Penn, as proprietor and governor of the province of Pennsylvania, granted a charter to the city of Philadelphia in 1691. This document is in existence, but all of the records of the proceedings of the city council created by it have been lost. In 1701 Penn granted a new charter which remained the basis of the government of Philadelphia until the Revolution. This charter was of the close corporation type. Penn named the members of the council in the charter and gave them the power of choosing their own successors. All the other charters of the colonial period were of either the New York or Philadelphia type, most of them being, however, much simpler in their provisions. New York and Philadelphia, in fact, were the only two chartered cities of the colonial period large enough really to deserve the name "city."

SOURCE—*The Charters of the Province of Pensilvania and City of Philadelphia* (Philadelphia: Printed and sold by B. Franklin. 1742), 23-30.

WILLIAM PENN, Proprietary and Governor of the Province of Pensilvania &c. To all to whom these Presents shall come, sends Greeting. KNOW YE, That at the humble Request of the Inhabitants and Settlers of this Town of *Philadelphia*, being some of the first Adventurers and Purchasers within this Province, for their Encouragement, and for the more immediate and entire Government of the said Town, and better Regulation of Trade therein, I have, by Virtue of the King's Letters Patent under the Great Seal of *England*, erected the said Town into a Burrough, and by these Presents do erect the said Town and Burrough of *Philadelphia* into a CITY; which said City shall extend the Limits and Bounds as it is laid out between *Delaware* and *Skuyllkill*.

AND I do for me, my Heirs and Assigns, grant and ordain, that the Streets of the said City shall for ever continue as they are now laid out and regulated; and that the End of each Street extending into the River *Delaware*, shall be and continue free for the Use and Service of the said City, and the Inhabitants thereof, who may improve the same for the best Advantage of the City, and build Wharfs so far out into the River there, as the Mayor, Aldermen and Common-Council, herein after mentioned, shall see meet.

AND I do nominate *Edward Shippen* to be the present Mayor, who shall so continue until another be chosen, as is herein after directed.

AND I do hereby assign and name *Thomas Story* to be present Recorder, to do and execute all Things which unto the Office of Recorder of the said City doth or may belong.

AND I do appoint *Thomas Farmar* to be the present Sheriff, and *Robert Assheton* to be the present Town-Clerk, and Clerk of the Peace, and Clerk of the Court and Courts.

AND I do hereby name, constitute and appoint *Joshua Carpenter, Griffith Jones, Anthony Morris, Joseph Wilcox, Nathan Stanbury, Charles Read, Thomas Masters* and *William Carter*, Citizens and Inhabitants of the said City, to be the present Aldermen of the said City of *Philadelphia*.

AND I do also nominate and appoint *John Parsons, William Hudson, William Lee, Nehemiah Allen, Thomas Paschal, John Bud, Junior, Edward Smout, Samuel Buckley, James Atkinson, Pentecost Teague, Francis Cook* and *Henry Badcocke*, to be the Twelve present Common-Council-Men of the said City.

AND I do by these Presents, for me, my Heirs and Successors, give, grant and declare, that the said Mayor, Recorder, Aldermen and Common-Council-Men for the Time being, and they which hereafter shall be Mayor, Recorder, Aldermen, and Common-Council-Men within the said City, and their Successors, for ever hereafter, be and shall be, by Virtue of these Presents, one Body corporate and politick in Deed, and by the Name of the Mayor and Commonalty of the City of *Philadelphia*, in the Province of *Pensilvania*: And them by the Name of Mayor and Commonalty of the City of *Philadelphia*, one Body politick and corporate in Deed and in Name, I do for me, my Heirs and Successors, fully create, constitute and confirm, by these Presents; and that by the same Name of Mayor and Commonalty of the City of *Philadelphia*, they may have perpetual Succession; and that they and their Successors, by the Name of Mayor and Commonalty of the City of *Philadelphia*, be and at all Times hereafter shall be Persons able and capable in Law, to have, get, receive and possess Lands and Tenements, Rents, Liberties, Jurisdictions, Franchises and Hereditaments, to them and their Successors, in Fee-simple, or for Term of Life, Lives, Years or otherwise; and also Goods, Chattels and other Things, of what Nature, Kind or Quality soever.

AND also to give, grant, let, sell and assign the same Lands,

Tenements, Hereditaments, Goods, Chattels, and to do and execute all other Things about the same, by the Name aforesaid; and also, that they be and shall be for ever hereafter Persons able and capable in Law, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all or any the Courts and other Places, and before any Judges, Justices, and other Persons whatsoever within the said Province, in all Manner of Actions, Suits, Complaints, Pleas, Causes and Matters whatsoever, and of what Nature or Kind soever.

AND that it shall and may be lawful to and for the said Mayor and Commonalty of the said City of *Philadelphia*, and their Successors, for ever hereafter, to have and use one common Seal for the Sealing of all Businesses touching the said Corporation, and the same from time to time at their Will and Pleasure to change or alter.

AND I do for me, my Heirs and Successors, give, and by these Presents grant full Power and Authority unto the Mayor, Recorder and Common-Council of the said City of *Philadelphia*, or any *Five* or more of the Aldermen, and *Nine* or more of the Common-Council-Men, the Mayor and Recorder for the Time being, or either of them, being present, on the First *Third Day* of the Week, in the *Eighth* Month yearly for ever hereafter, publickly to meet at a convenient Room or Place within the said City, to be by them appointed for that Purpose, and then and there nominate, elect and chuse one of the Aldermen to be Mayor for that ensuing Year.

AND also to add to the Number of Aldermen and Common-Council-Men, such and so many of those, that by Virtue of these Presents shall be admitted Freemen of the said City from time to time, as they the said Mayor, Aldermen and Common-Council shall see Occasion.

AND that such Person who shall be so elected Mayor as aforesaid, shall, within *Three* Days next after such Election, be presented before the Governor of this Province, or his Deputy for the Time being, and there shall subscribe the Declarations and Profession of his Christian Belief, according to the late Act of Parliament made in the *First* Year of King *William's* Reign, entitled, *An Act for exempting Their Majesties Subjects, dissenting from the Church of England, from the Penalties of certain Laws*; and then and there the Mayor so presented, shall make his solemn Affirmation and Engagement for the due Execution of his Office.

AND that the Recorder, Sheriff, Aldermen and Common-

Council-Men, and all other Officers of the said City, before they or any of them shall be admitted to execute their respective Offices, shall make and subscribe the said Declarations and Profession aforesaid before the Mayor for the Time being, and at the same time shall be attested for the due Execution of their Offices respectively; which Declarations, Promises and Attestations, the Mayor of the said City for the Time being, is hereby impowered to take and administer accordingly.

AND that the Mayor, Recorder and Aldermen of the said City, for the Time being, shall be the Justices of the Peace and Justices of Oyer and Terminer; and are hereby impowered to act within the said City and Liberties thereof accordingly, as fully and amply as any Justice or Justices of the Peace or Oyer and Terminer, can or may do within the said Province.

AND that they or any *Four* or more of them (whereof the Mayor and Recorder of the said City for the Time being shall be *Two*) shall and may for ever hereafter have Power and Authority, by Virtue of these Presents, to hear and enquire into all and all Manner of Treasons, Murthers, Manslaughters, and all Manner of Felonies and other Crimes and Offences, Capital and Criminal, whatsoever, according to the Laws of this Province and of the Kingdom of *England*, with Power also to hear and determine all petty Larcenies, Routs, Riots, unlawful Assemblies; and to try and punish all Persons that shall be convicted for Drunkenness, Swearing, Scolding, Breaking the Peace, or such like Offences, which are by the Laws of this Province to be punished by Fine, Imprisonment or Whipping; with Power also to award Process against all Rioters and Breakers of the Peace, and to bind them, and all other offenders and Persons of evil Fame, to the Peace or good Behaviour, as any Justice or Justices of the Peace can do, without being accountable to me or my Heirs, for any Fines or Amerciaments to be imposed for the said Offences or any of them.

AND I do hereby empower them or any *Four* of them (whereof the Mayor and Recorder for the Time being shall be *Two*) with the City-Sheriff and Town-Clerk, to hold and keep a Court of Record Quarterly, or oftener, if they see Occasion, for the enquiring, hearing and determining of the Pleas and Matters aforesaid; and upon their own View, or after a legal Procedure in some of those Courts, to cause all Nuisances and Encroachments in the Streets of the said City to be removed, and punish the Parties concerned, as the Law and Usage in such Cases shall require.

AND I do by these Presents assign and appoint, that the present Mayor, Recorder and Aldermen herein before-mentioned, be the present Justices of the Peace, and Oyer and Terminer, within the said City; and that they and all others that shall be Mayors, Recorders and Aldermen of the said City for the Time being, shall have full Power and Authority, and are hereby impowered and authorized, without any further or other Commission, to be Justices of the Peace, and of Oyer and Terminer, within the said City for ever; and shall also be Justices of the Peace, and the Mayor and Recorder shall be of the *Quorum* of the Justices of the County-Courts, Quarter-Sessions, Oyer and Terminer, and Goal-delivery¹ in the said County of *Philadelphia*; and shall have full Power to award Process, bind to the Peace or Behaviour, or commit to Prison, for any Matter or Cause arising without the said City and within the Body of the aforesaid County, as Occasion shall require; and to cause Kalenders to be made of such Prisoners, which, together with all Recognizances and Examinations taken before them for or concerning any Matter or Cause not determinable by them, shall be duly returned to the Judges or Justices of the said County, in their respective Courts where the same shall be cognizable.

AND that it may be lawful to and for the said Mayor and Commonalty and their Successors, when they see Occasion, to erect a Goal or Prison and Court-House within the said City.

AND that the Mayor and Recorder for the Time being, shall have, and by these Presents have Power to take Recognizance of Debts there, according to the Statute of Merchants, and of Action Burnel; and to use and affix the common Seal thereupon, and to all Certificates concerning the same.

AND that it be lawful to and for the Mayor of the said City for the Time being, for ever hereafter to nominate, and from time to time appoint the Clerk of the Market, who shall have Assize of Bread, Wine, Beer, Wood and other Things; and to do, execute and perform all Things belonging to the Clerk of the Market within the said City.

AND I will that the Coroners to be chosen by the County of *Philadelphia* for the Time being, shall be Coroners of the said City and Liberties thereof; but that the Freemen and Inhabitants of the said City shall from time to time, as often as Occasion be, have equal Liberty with the Inhabitants of the said County, to recommend or chuse Persons to serve in the respective Capacities

¹ This is the spelling of the charter as printed.

of Coroners and Sheriffs for the County of *Philadelphia*, who shall reside within the said City.

AND that the Sheriff of the said City and County for the Time being shall be the Water-Bailiff, who shall and may execute and perform all things belonging to the Office of Water-Bailiff upon *Delaware* River, and all other navigable Rivers and Creeks within the said Province.

AND in Case the Mayor of the said City for the Time being, shall, during the Time of his Mayoralty, misbehave himself, or misgovern in that Office, I do hereby empower the Recorder, Aldermen and Common-Council-Men, or *Five* of the Aldermen and *Nine* of the Common-Council-Men of the said City of *Philadelphia* for the Time being, to remove such Mayor from his Office of Mayoralty; and in such Case, or in Case of the Death of the said Mayor for the Time being, that then another fit Person shall, within *Four* Days next after such Death or Removal, be chosen in Manner as is above directed for electing of Mayors, in the Place of him so dead or removed.

AND lest there should be a Failure of Justice or Government in the said City, in such Interval, I do hereby appoint, That the eldest Alderman for the Time being shall take upon him the Office of a Mayor there, and shall exercise the same till another Mayor be chosen as aforesaid; and in Case of the Disability of such eldest Alderman, then the next in Seniority shall take upon him the said Office of Mayor, to exercise the same as aforesaid.

AND in Case the Recorder, or any of the Aldermen or Common-Council-Men of or belonging to the said City, for the Time being, shall misbehave him or themselves in their respective Offices and Places, they shall be remov'd and others chosen in their stead, in Manner following, *that is to say*, The Recorder for the Time being may be removed (for his Misbehaviour) by the Mayor, and *Two Thirds* of the Aldermen and Common-Council-Men respectively; and in Case of such Removal or of the Death of the Recorder, then to chuse another fit Person skilled in the Law, to be the Recorder there, and so to continue during Pleasure, as aforesaid. And the Alderman so misbehaving himself, may be removed by the Mayor, Recorder and *Nine* of the Aldermen and Common-Council-Men; and in Case of such Removal or Death, then within *Four* Days after, to chuse a fit Person or Persons to supply such Vacancies; and the Common-Council-Men, Constables, and Clerk of the Market,

for Misbehaviour, shall be removed and others chosen as is directed in the Case of Aldermen.

AND I do also, for me and my Successors, by these Presents, grant to the said Mayor and Commonalty, and their Successors, that if any of the Citizens of the said City, shall be hereafter nominated, elected and chosen to the Office of Mayor, Aldermen and Common-Council-Men as aforesaid, and having Notice of his or their Election, shall refuse to undertake and execute that Office to which he is so chosen, that then, and so often it shall and may be lawful for the Mayor and Recorder, Aldermen and Common-Council-Men, or the major Part of the Aldermen and Common-Council-Men for the Time being, according to their Discretion, to impose such moderate Fines upon such Refusers, so as the Mayor's Fine exceed not *Forty Pounds*, the Alderman's *Five and Thirty Pounds*, and Common-Council-Men *Twenty Pounds*, and other Officers proportionably, to be levied by Distress and Sale, by Warrant under the common Seal, or by other lawful Ways, to the Use of the said Corporation. And in such Cases it shall be lawful to chuse others to supply the Defects of such Refusers, in Manner as is above directed for Elections.

AND that it shall and may be lawful to and for the Mayor, Recorder, and at least *Three* Aldermen for the Time being, from time to time, so often as they shall find Occasion, to summon a Common-Council of the said City.

AND that no Assembly or Meeting of the said Citizens shall be deemed or accounted a Common-Council, unless the said Mayor and Recorder, and at least *Three* of the Aldermen for the Time being, and *Nine* of the Common-Council-Men be present.

AND also that the said Mayor, Recorder, Aldermen and Common-Council-Men for the Time being, from time to time, at their Common-Council, shall have Power to admit such and so many Freemen into their Corporation and Society as they shall think fit.

AND to make (and they may make, ordain, constitute and establish) such and so many good and reasonable Laws, Ordinances and Constitutions (not repugnant to the Laws of *England* and this Government) as to the greater Part of them at such Common-Council assembled (where the Mayor and Recorder for the Time being, are to be always present) shall seem necessary and convenient for the Government of the said City.

AND the same Laws, Ordinances, Orders and Constitutions so

to be made, to put in Use and Execution accordingly, by the proper Officers of the said City; and at their Pleasure to revoke, alter and make anew, as Occasion shall require.

AND also impose such Mulets and Amerciaments upon the Breakers of such Laws and Ordinances, as to them in their Discretion shall be thought reasonable; which Mulets, as also all other Fines and Amerciaments to be set or imposed by Virtue of the Powers granted, shall be levied as above is directed in Case of Fines, to the Use of the said Corporation, without rendering any Account thereof to me, my Heirs and Successors; with Power to the Common-Council aforesaid, to mitigate, remit or release such Fines and Mulets, upon the Submission of the Parties. *Provided always*, That no Person or Persons hereafter shall have Right of Electing or being elected, by Virtue of these Presents, to any Office or Place judicial or ministerial, nor shall be admitted Freemen of the said City, unless they be free Denizens of this Province, and are of the Age of *Twenty-One* Years or upwards, and are Inhabitants of the said City, and have an Estate of Inheritance or Freehold therein, or are worth *Fifty Pounds* in Money or other Stock, and have been resident in the said City for the Space of *Two* Years, or shall purchase their Freedom of the Mayor and Commonalty aforesaid.

AND I do further grant to the said Mayor and Commonalty of the City of *Philadelphia*, that they and their Successors shall and may for ever hereafter hold and keep within the said City, in every Week of the Year, *Two* Market-Days, the one upon the *Fourth* Day of the Week and the other upon the *Seventh* Day of the Week, in such Place or Places, as is, shall, or may be appointed for that Purpose, by the said Commonalty or their Successors, from time to time.

AND also *Two* Fairs therein every Year, the one of them to begin on the *Sixteenth* day of the *Third* Month, called *May*, yearly, and so to be held in and about the Market-Place, and continue for that Day and *Two* days next following; and the other of the said Fairs to be held in the aforesaid Place on the *Sixteenth* Day of the *Ninth* Month yearly, and for *Two* Days next after.

AND I do for me, my Heirs and Assigns, by Virtue of the King's Letters Patent, make, erect and constitute the said City of *Philadelphia*, to be a Port or Harbour for discharging and un-lading of Goods and Merchandize out of Ships, Boats and other Vessels; and for lading and shipping them in or upon such and so

many Places, Keys and Wharfs there, as by the Mayor, Aldermen and Common-Council of the said City shall from time to time be thought most expedient for the Accommodation and Service of the Officers of the Customs, in the Management of the King's Affairs and Preservation of His Duties, as well as for Conveniency of Trade.

AND I do ordain and declare, that the said Port or Harbour shall be called the Port of *Philadelphia*, and shall extend and be accounted to extend into all such Creeks, Rivers and Places within this Province, and shall have so many Wharfs, Keys, Landing-Places and Members belonging thereto, for Landing and Shipping of Goods, as the said Mayor, Aldermen and Common-Council for the Time being, with the Approbation of the chief Officer or Officers of the King's Customs, shall from time to time think fit to appoint.

AND I do also ordain, that the Landing-Places now and heretofore used at the *Penny-Pot-House* and *Blue Anchor*, saving to all Persons their just and legal Rights and Properties in the Land so to be open, as also the Swamp between *Bud's* Buildings and the *Society-Hill*, shall be left open and common for the Use and Service of the said City and all others, with Liberty to dig Doeks and make Harbours for Ships and Vessels in all or any Part of the said Swamp.

AND I do hereby grant, that all the vacant Land within the Bounds and Limits of the said City, shall remain open as a free Common of Pasture, for the Use of the Inhabitants of the said City, until the same shall be gradually taken in, in order to build or improve thereon, and not otherwise. *Provided always*, that nothing herein contained, shall debar me or my Heirs in time to come, from fencing in all the vacant Lands that lie between the *Center-Meeting-House* and the *Skuylkil*, which I intend shall be divided from the Land by me allotted for *Delaware Side*, by a straight Line along the *Broad-Street* from *Edward Shippen's* Land through the *Center-Square* by *Daniel Pegg's* Land; nor shall the fencing or taking in of any of the Streets, happening to be within that Inclosure on *Skuylkil*, be deemed or adjudged to be an In-croachment, where it shall not interfere or stop any of the Streets or Passages leading to any of the Houses built or to be built on that Side, any thing herein contained to the contrary notwithstanding.

AND I do grant, that this present Charter shall in all Courts

of Law and Equity be construed and taken most favourably and beneficially for the said Corporation.

IN WITNESS whereof I have hereunto set my Hand and caused my Great Seal to be affixed. Dated at *Philadelphia* the *Five and Twentieth* Day of *October*, Anno Domini *One Thousand Seven Hundred and One*, and in the *Thirteenth* Year of the Reign of King *WILLIAM the Third*, over *England*, &c. and the *One and Twentieth* Year of my Government.

WILLIAM PENN.

PART II

DEVELOPMENT OF CITY GOVERNMENT IN THE UNITED STATES DURING THE CENTURY SUC- CEEDING THE AMERICAN REVOLUTION

6. Extract from the Constitution of the State of New York, 1777.

Very few of the early state constitutions made any reference to municipal corporations. The constitution of New York, adopted in 1777, was, however, an exception. It specifically continued in force the charter which had previously been granted to "bodies politic" and provided for the appointment, by the council of appointments, of the officers of municipal corporations who had previously been appointed by the governor.

SOURCE—*The Constitution of the State of New York* (adopted in April 1777), in *Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New-York* (Albany, 1821), 19.

XXXVI. *And be it further ordained*, That all grants of land within this state, made by the king of Great-Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but that nothing in this constitution contained, shall be construed to affect any grants of land, within this state, made by the authority of the said king or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void, by reason of any nonuser or misuser of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. *And further*, that all such of the officers, described in the said charters respectively, as, by the terms of the said charters, were to be appointed by the governor of the colony of New-York, with or without the advice and consent of

the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution for the appointment of officers in this state, until otherwise directed by the legislature. . . .

7. The Charter of Philadelphia, 1789.

The first important charter to be granted after the Revolution was that of Philadelphia, enacted by the Pennsylvania legislature in 1789. From the outbreak of the Revolution to the enactment of this charter, Philadelphia had been without a city government. The new government differed from that under Penn's charter in two important respects: it provided for the election of the city council by the people, and it vested numerous important powers which had previously been exercised by independently elected boards in the corporation itself.

SOURCE—*Pennsylvania Statutes at Large, 1682-1801* (Harrisburg, 1908), XIII, 193-214.

An act to Incorporate the City of Philadelphia.

(Section I, P. L.) Whereas the intention of civil government is to provide for the order, safety and happiness of the people and where the general systems and regulations thereof are found to be ineffectual it is the duty of the legislature to remedy the defects:

And whereas the administration of government within the city of Philadelphia is in its present form inadequate to the suppression of vice and immorality, to the advancement of the public health and order and to the promotion of trade, industry and happiness and in order to provide against the [evils] occasioned thereby it is necessary to invest the inhabitants thereof with more speedy, vigorous and effective powers of government than are at present established:

[Section I.] (Section II, P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in general assembly met and by the authority of the same, That the inhabitants of the city of Philadelphia as the same extends and is laid out between the rivers Delaware and Schuylkill be and they and their successors forever are hereby constituted a corporation and body politic in fact and

in law by the name and style of "The Mayor, Aldermen and Citizens of Philadelphia," . . .

[Section III.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That agreeably to the desire of a majority of the freeholders of the said city expressed in their petitions to this house, it shall and may be lawful for the freeholders of the said city to meet together at the state-house in the said city or at such other place therein as shall be appointed for holding of the elections of representatives to serve in the general assembly of this commonwealth, between the hours of ten and twelve of the clock in the forenoon on the first Tuesday in April next, and on the first Tuesday in April which will be in the year of our Lord one thousand seven hundred and ninety-six and so on, on the first Tuesday in April at the end of each and every seven years forever; and then and there to choose by ballot out of the inhabitants of the said city in the manner which now is and from time to time shall be prescribed by the laws for choosing representatives to serve in the said general assembly, fifteen suitable and proper persons to serve as aldermen in and for the said city for the term of seven years.

[Section IV.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the freemen of the said city who are or shall be qualified agreeably to the laws and constitution of this commonwealth to vote for members to serve in the said general assembly, to meet together at the place aforesaid between the hours of ten and twelve of the clock in the forenoon on the second Tuesday in April next and on the second Tuesday in April which will be in the year of our Lord one thousand seven hundred and ninety-two and so on, on the second Tuesday in April at the end of each and every three years forever and then and there to choose by ballot out of the inhabitants of the said city in manner aforesaid thirty suitable and proper persons to serve as common councilmen in and for the said city for the term of three years. . . .¹

[Section XII.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the aldermen of the said city or a majority of them to elect and choose by ballot every year or oftener if a vacancy shall happen by death, resignation, removal from office or from the city, one of their

¹Sections V-XI contain further provisions concerning the election of aldermen and common councilmen.

own number who shall be mayor of the said city for the ensuing year if the time for which he shall have been elected and chosen as alderman shall so long continue, and the said mayor [elect] shall be presented to his excellency the president or the vice-president in council, and shall then and there take a solemn oath or affirmation "well and faithfully to execute the office of mayor of the said city," and shall thereupon enter upon and perform the duties of the said office without any further or other commission.

[Section XIII.] (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said mayor and aldermen or a majority of them to elect and choose by ballot out of the freemen and inhabitants of the said city a recorder of the said city who shall hold the said office and be vested with all the powers and jurisdictions thereof and with all the powers and jurisdictions of a justice of the peace within the said city for the term of seven years and the same office of recorder shall be filled and supplied in manner aforesaid as often as a vacancy shall happen therein in manner aforesaid and the said recorder or person who shall be so as aforesaid chosen for that purpose shall, before he enters upon the duties of the said office, or upon any other duty in pursuance of this act, take a solemn oath or affirmation before the mayor of the said city for the time being "well and faithfully to execute and perform the office of recorder of the said city," and shall thereupon enter upon the duties thereof without any further or other commission, Provided nevertheless, That each and every mayor, recorder or alderman who shall be elected, chosen or appointed in pursuance of this act and who shall misdemean himself in office shall be liable to be impeached by the general assembly before the president or vice-president and council and shall be removable for misconduct in office by the said general assembly.

And in order that the said common councilmen may at all times consist of those who are not only able and capable to perform the duties thereof but of such as shall be mindful of and attentive to the said duties and in order also to avoid an entire dependence which might not be politically just and expedient of any such common councilman either on the body of which he may be a member or on that of the aldermen:

[Section XIV.] (Section XV, P. L.) Be it further enacted by the authority aforesaid, That if any common councilman shall misbehave himself in his said office or shall fail or neglect well and

faithfully to discharge the duties thereof, it shall and may be lawful for the mayor or recorder, aldermen and common councilmen or a majority of the aldermen and also of the common councilmen if the said mayor or recorder and two-thirds of the aldermen and also two-thirds of the common councilmen who shall be present shall agree thereto on the petition and complaint in writing of twenty-four freeholders of the said city and of twenty-four freemen of the said city who shall not be freeholders but who shall nevertheless be qualified in manner aforesaid to vote for common councilmen, to remove in a summary way any such common councilman from his said office, Provided nevertheless, That the said petition and complaint in writing shall fully and minutely state all the causes assigned for such removal and no other cause whatever shall be assigned, heard or inquired into, And provided also, That a copy of the said petition and complaint with a notice of the time and place appointed for hearing and inquiring into the same shall be served on such common councilman at least ten days before any such hearing or inquiring shall take place.

[Section XV.] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the mayor, recorder, aldermen and common councilmen in common council assembled shall have full power and authority to make, ordain, constitute and establish such and so many laws, ordinances, regulations and constitutions (provided the same shall not be repugnant to the laws and constitution of this commonwealth) as shall be necessary or convenient for the government and welfare of the said city and the same to enforce, put in use and execution by the proper officers and at their pleasure to revoke, alter and make anew as occasion may require. And in order that a knowledge of the said laws, ordinances, regulations and constitutions may at all times be had and obtained:

[Section XVI.] (Section XVII, P. L.) It is hereby further enacted by the authority aforesaid, That such and so many of them as shall not be published in two or more of the public newspapers published in the said city within ten days from and after their being severally passed, ordained and established and also recorded in the office of the master of the rolls who shall be allowed and paid for recording thereof at the same rate as is allowed for recording the laws of this commonwealth within thirty days from and after their being so as aforesaid passed, ordained, and established, shall be null and void:

And in order that the publications thereof may at all times be known and ascertained :

[Section XVII.] (Section XVIII, P. L.) It is further enacted and declared by the authority aforesaid, That before any of the said laws, ordinances, regulations or constitutions shall be so as aforesaid recorded, the publications thereof respectively, with the times thereof, shall be proved by the oath or solemn affirmation of some credible person which said oath or affirmation shall be recorded therewith and at all times be deemed and taken as sufficient evidence of the time of such publication.

[Section XVIII.] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That the mayor, recorder and aldermen of the said city for the time being shall severally and respectively have all the jurisdictions, powers and authorities of justices of the peace and justices of oyer and terminer and gaol delivery of and for the said city and shall act therein accordingly, jointly or severally, as fully and amply as any justice or justices of the peace or of oyer and terminer or gaol delivery, of or for any county within this commonwealth may or can do, in or for such county. . . .¹

[Section XXIV.] (Section XXV, P. L.) Be it further enacted by the authority aforesaid, That one other court shall be and is hereby established within the said city, by the name, style and title of "The Aldermen's Court," and shall consist of three of the aldermen of the said city for the time being (any two of whom shall be a quorum) to be chosen and appointed for that purpose by the mayor and recorder four times in each year or oftener if they shall think proper; which said "Aldermen's Court" shall meet on the forenoon of the Monday in each and every week and shall sit from day to day during so many days of each week and of so much of the said days as shall be necessary for the hearing and determining of all the matters and things in and by this act made cognizable therein and for carrying their judgments into full effect by executions and otherwise, and the said "Aldermen's Court" shall solely

¹Fourteen of the forty-two sections, (XVIII-XXXI), of the charter deal with the judicial functions of the municipal officials, indicating the relative importance attaching to the judicial powers of the early American cities.

"The Mayor's Court," consisting of the mayor, recorder and aldermen, "or any four of them, whereof the mayor or recorder shall be one," was, according to Section XIX, given powers equivalent to those of a county court of general quarter sessions of the peace to try and punish all "larcenies, forgeries, perjuries, assaults and batteries, riots, routs, and unlawful assemblies and all other offenses," committed within the city, including those against laws or ordinances made in pursuance of this charter.

and exclusively have cognizance of and full power and authority to hear, try and determine in a summary way all such causes, matters and things within the said city as are by law cognizable before any one justice of the peace within this state where the debt or demand amounts to forty shillings and does not exceed ten pounds, in like manner and with the like powers and authorities and under and subject to the like regulations, restrictions and exceptions, and to the like relief for insolvent debtors and to the like means, process, execution and stay thereof and to the like appeal as in cases of debts or demands of forty shillings or upwards and not exceeding ten pounds before any one justice as aforesaid.

Provided nevertheless, That in all cases where the debt or demand shall be above forty shillings and shall not exceed ten pounds application shall be made by the party to one of the said aldermen who shall for the time being constitute or be a member of the court hereby established by the name and title of [The] "Aldermen's Court," which said alderman so applied to is hereby authorized and empowered to issue forth under his hand and seal any warrant or warrants of summons, capias or attachments as the case may require, returnable into the same court and also such and so many subpoenæs as may be needful and necessary, all of which shall be of the like force and effect and be obeyed in like manner and under the same pains and penalties with any warrants or subpoenæs of a like nature issued by any justice of the peace within this commonwealth in any matter within the jurisdiction of any such justice. . . .¹

[Section XXXII.] (Section XXXIV, P. L.) And be it further enacted by the authority aforesaid, That so much of all and every act and acts of general assembly as directs, authorizes or requires any matters or things to be done and performed by the city wardens or by the commissioners for paving and cleansing the streets of the said city or by all or any of them, shall from and after the first day of June next be null and void, and the said officers shall no longer continue in office nor shall any new appoint[ment] of such officers be made under any former law or act of assembly. Provided nevertheless, That nothing herein contained shall bar, prevent or at all impede the recovery of any sum or sums of money or of any other matter or thing for the recovery whereof the said

¹The power to try matters involving a debt or demand of less than forty shillings was given to the mayor and to "each and every alderman." (Section XXVI.)

wardens or commissioners have instituted any suit, cause or action, but the same shall and lawfully may be carried on by the said mayor, aldermen and citizens in the names of the said wardens or of the said commissioners as the case may require, to final judgment, execution and recovery as fully and effectually as the same might or could have been done by the said wardens or commissioners had this act not been passed. And provided further, That all and every matter and thing that has been commenced, begun or entered upon by the said wardens and commissioners or either of them, in pursuance of the powers and authorities in them vested shall be of the same force and effect as if this act had not been passed and may from and after the said first day of June next be proceeded in and carried into effect agreeably to the directions of this act as fully as the same might or could have been done by the said wardens and commissioners or either of them had this act not been made and for this purpose all contracts and agreements made or entered into by the said wardens and commissioners or either of them, in pursuance of the powers in them legally vested or which they or either of them shall in manner aforesaid enter into before the said first day of June next, shall be equally binding upon the said mayor, aldermen and citizens, and upon the person or persons with whom the same have been or shall be made as if the same had originally been made and entered into by and between them.

[Section XXXIII.] (Section XXXV, P. L.) And be it further enacted by the authority aforesaid, That from and after the said first day of June next, the mayor, recorder, aldermen and common councilmen shall be and they are hereby fully authorized and empowered either by themselves or by proper persons for that purpose to be by them appointed, to do, perform and execute all such matters and things as the said wardens and street commissioners were, at and immediately before the passing of this act, respectively authorized or enabled by law to do.

[Section XXXIV.] (Section XXXVI, P. L.) And be it further enacted by the authority aforesaid, That from and after the said first day of June next, the mayor or recorder and four of the aldermen shall be and they are hereby fully authorized and empowered either by themselves or by proper persons to be by them for that purpose appointed, to do, perform and execute all such matters and things as the said wardens and street commissioners respectively were at and immediately before the passing

of this act authorized and enabled by law to do and perform, in conjunction with any justice or justices of the peace of and for the city and county of Philadelphia or [of] either of them and for the several purposes aforesaid it shall and may be lawful for the said mayor, recorder, aldermen and common councilmen in common council assembled to make, ordain and establish such ordinances, regulations and provisions concerning the same as by them shall be deemed necessary and expedient, and also to allow and make such rewards and compensation to the several officers of the said corporation and persons to be employed in the service thereof as shall be just and reasonable. Provided nevertheless, That the consent and approbation of the mayor or recorder and of a majority of the aldermen and also of the common councilmen who shall from time to time be present and in common council assembled shall be necessary to the making, ordaining or establishing of any such rules, regulations, appointments, laws, ordinances and constitutions as the said mayor, recorder, aldermen and common councilmen in common council assembled are in and by this act authorized or empowered to make, ordain or establish. . . .

[Section XXXVII.] (Section XXXIX, P. L.) And be it further enacted by the authority aforesaid, That for the well governing of the said city and the ordering of the affairs thereof there shall be such other officers therein and at such salaries or other compensation, as the mayor, recorder, aldermen and common councilmen in common council assembled shall direct, each and every of which said officer and officers shall nevertheless before entering on the duties of his office take a solemn oath or affirmation before the mayor of the said city for the time being well and faithfully to perform and execute the same. . . .

[Section XL.] (Section XLII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the mayor or recorder for the time being from time to time as often as they or either of them shall see occasion, to summon a common council, and that no assembly or meeting shall be deemed or accounted a common council unless the mayor or recorder and at least eight of the aldermen and sixteen of the common councilmen shall be present.

[Section XLI.] (Section XLIII, P. L.) And be it further enacted by the authority aforesaid, That the said mayor, aldermen and common councilmen shall once in every year cause to be published a just and true account of all the moneys which shall have

accrued to them in their corporate capacity during the year next preceding such publication and also of the disposition thereof and shall also lay a copy thereof before the general assembly.

[Section XLII.] (Section XLIV, P. L.) And be it further enacted by the authority aforesaid, That as often as any doubts shall arise concerning this act the same shall in all courts of equity, and elsewhere be construed and taken most favorably for the said corporation.

8. Amendments to the Charter of Philadelphia, 1796.

It was by these amendments that the two-chamber system was first introduced into city government.

SOURCE—*Pennsylvania Statutes at Large*, 1682-1801 (Harrisburg, 1911), XV, 462-464.

An Act to Alter and Amend the Several Acts of the General Assembly of this Commonwealth Incorporating the City of Philadelphia.

Whereas, many of the citizens of Philadelphia have prayed for such alterations in their charter of incorporation, as that it may be rendered more similar to the frame of government of this commonwealth, and it is reasonable that the prayer of their petitions should be granted. Therefore:

[Section I.] (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the freemen of the city of Philadelphia qualified to elect members of the general assembly of this commonwealth, shall meet together on the second Tuesday of October next, and on the same day yearly thereafter, and elect by ballot twenty persons, qualified to serve as members of the house of representatives of this commonwealth, to be members of the common council, for the year next ensuing their election.

[Section II.] (Section II, P. L.) And be it further enacted by the authority aforesaid, That the said freemen shall, on the said second Tuesday of October next, also elect by ballot twelve persons, qualified to serve as Senators of this commonwealth, to be members of the select council of the said city, who shall, forthwith after their election, divide themselves by lot into three classes, the seats of the first class shall be vacated at the expiration of the

second year, and of the third class at the expiration of the third year, so that one-third may be chosen every year.

[Section III.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That the whole legislative power of the corporation of the said city shall be exclusively vested in the said select and common councils, who shall perform all legislative acts, as separate and distinct bodies, and shall exercise, possess and enjoy, all and singular, the legislative powers which the mayor or aldermen, recorder and Common Council of the said city, in common council assembled, at present may, or can lawfully and of right exercise and enjoy.

[Section IV.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the governor shall appoint one recorder and fifteen aldermen for the said city, who shall hold their offices during good behaviour, and who shall exercise, possess and enjoy, all and singular, the powers and privileges now exercised, possessed and enjoyed by the recorder and aldermen of the said city, and who shall meet together, at such times as may be proper, for the purpose of exercising the powers and privileges aforesaid (legislative powers only excepted).

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the members of the select and common councils shall, on the third Tuesday of October next, and on the same day yearly thereafter, meet together and elect viva voce one of the said aldermen as mayor of the said city, whose duty (besides that of an alderman of the said city) shall be to preside in the mayor's court when present, to promulgate the by-laws, rules and ordinances of the corporation, and to pay a special attention to the due execution and fulfillment of the same, and who shall be entitled to receive, hold and enjoy all the emoluments now attached to the office of mayor, or which, by the laws and ordinances of the corporation, may be hereafter annexed to the same.

[Section VI.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the doors of the respective halls of the said select and common councils shall be open for the admission of all peaceable and orderly persons, who shall be desirous of being present at the discussion of any by-laws, ordinances, rules, or regulations for the welfare and good government of the city.

[Section VII.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That the aldermen which shall be chosen at the election to be held on the first Tuesday in April in this

present year, and the mayor and recorder which shall be chosen by the said aldermen agreeably to the laws now in force, shall hold their several and respective offices until the second Tuesday in October next, and no longer, and that from and after the said second Tuesday in October next, so much of the act of the general assembly of this commonwealth entitled "An act to incorporate the city of Philadelphia," passed the eleventh day of March, one thousand seven hundred and eighty-nine, and of any and every supplement thereto, as is hereby altered and supplied (and no more), shall be thenceforth repealed.

9. The Charter of the Borough of Huntingdon, Pennsylvania, 1796.

After the Revolution the Pennsylvania legislature granted charters of incorporation to a great many small villages under the name of boroughs. This was doubtless due to the absence of any effective form of town government in Pennsylvania. The charter of the Borough of Huntingdon has been selected as typical of this form of incorporation.

SOURCE—*Pennsylvania Statutes at Large*, 1682-1801 (Harrisburg, 1911), XV, 424-428.

An Act to Erect the Town of Huntingdon in the County of Huntingdon into a Borough.

[Section I.] (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the town of Huntingdon, in the county of Huntingdon, shall be, and the same is hereby, erected into a borough, which shall be called the borough of Huntingdon, and shall be comprised within the following bounds, to wit: . . .

[Section II.] (Section II, P. L.) And be it enacted by the authority aforesaid, That all persons residing within the said borough one whole year previous to the election, and being entitled to vote for members of the general assembly, shall, on the first Monday of April in each and every year hereafter, meet together at the court house in the same borough, and shall then and there elect by ballot three reputable citizens, residing therein, the highest of votes in whom shall be chief burgess, and the others

assistant burgesses, and shall also elect a town clerk and high constable, and seven reputable citizens to be a town council, and, previous to any such election, the said inhabitants shall elect three citizens, one of whom shall preside as judge, one to act as inspector, and the other to perform the duty of clerk, according to the direction of the general election laws of this commonwealth (so far as relates to receiving and counting votes) and shall be subject to the same pains and penalties for malpractices as by the said laws are declared and appointed, and the said judge, inspector and clerk shall, previous to the exercise of any of their duties, take an oath, or affirmation, to act in their respective stations without partiality, and shall hold the said elections (from time to time as often as occasion may require) receive and count the ballots, and declare the persons having the greatest number of votes to be duly elected, whereupon duplicate certificates thereof shall be signed by the said judge, inspector and clerk, one whereof shall be transmitted to the prothonotary's office of said county, and the other filed among the records of the corporation, and if two or any greater number of persons have an equal number of votes, for any of the said offices, or if an election be disputed upon other principles, the said return shall be laid before the court of common pleas of the said county at the term next ensuing said election, who, upon examination into the nature of the return, shall determine which of the said persons shall fill the said office, and, in case of vacancy by refusal to accept, death, removal from the said borough, or resignation of any of the said officers, the said burgesses, or any of them, shall issue, without delay, their or his process, directed to the high constable, requiring him to hold an election to fill such vacancy, he giving at least ten days notice by advertisements set up at five of the most public places within the said borough.

[Section III.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That the burgesses and town council, duly elected as aforesaid, and their successors forever hereafter, shall be one body politic and corporate in law, by the name of "The burgesses and town council of the borough of Huntingdon in the county of Huntingdon" and shall have perpetual succession, and it shall and may be lawful to and for the said burgesses and town council aforesaid, and their successors forever hereafter, to have and use one common seal, and the same from time to time at their will to change and alter.

[Section IV.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That if any person, duly elected burgess, or a member of the town council aforesaid, having notice thereof, shall refuse or neglect to take upon himself the execution of the office to which he shall be elected, every such person so refusing, or neglecting, shall forfeit and pay a fine of twenty dollars, which fines, and all other fines and forfeitures incurred and made payable in pursuance of this act, or of the by-laws and ordinances of the said burgess and town council, shall be for the use of the said corporation.

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid. That the chief burgess, assistant burgess, town clerk, high constable and each member of the town council, shall take and subscribe an oath or affirmation before any one of the judges or justices of the peace for the county of Huntingdon, "to support the constitution of the United States and of this state, and well and truly to execute the duties of their respective offices in the borough of Huntingdon" before they shall enter upon their respective offices, and the certificate of such oath or affirmation, having been made, shall be recorded in the books of the said corporation.

[Section VI.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said burgesses and town council to meet and assemble together, as often as occasion may require, to enact such by-laws, and make such ordinances, rules and regulations, assess and appropriate such taxes, as shall be thought best calculated to promote the interests of the said corporation, and preserve good order therein, which by-laws, ordinances, rules and regulations shall not be inconsistent with the constitution and laws of this state, or of the United States, and the same to revoke, annul, alter and make anew, as occasion may require, but no by-laws or ordinances shall be enacted, or rules and regulations made, unless agreed to by a majority of the burgesses and members of the town council for the time being.

[Section VII.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That the said burgesses shall be, and they are hereby, authorized and required to cause the by-laws, ordinances, rules and regulations made as aforesaid, to be carried into full and complete execution without delay, and it shall be the duty of the town clerk to attend all meetings of the burgesses and town council, when assembled on business of the corporation, and

shall perform the duties of clerk thereto, and keep and preserve the common seal, records, books, and other documents, relating to said corporation, under the penalty of being answerable to any person concerned for all damages, and of removal from office by the burgesses, or any two of them, and the high constable shall do and perform all duties on him enjoined by this act, and the by-laws or ordinances of the burgesses and town council, under the like penalties.

[Section VIII.] Provided always, That if any person shall think him or herself aggrieved, by anything done in pursuance of this act, he or she may appeal to the next court of quarter sessions for the said county of Huntingdon, he or she first giving security to prosecute his or her appeal with effect, which court shall take such order therein as shall be just and reasonable.

10. The Charter of Baltimore, 1796.

This charter, which became a law on the last day of December, 1796, is very significant in the history of American municipal development. It provided not only for a two-chamber council and for the election of the upper chamber directly by electors, but for the independent choice of the mayor by the same electors. The mayor was given a qualified veto power in much the same terms as that power was conferred upon the president of the United States by the constitution of 1787. This is the first appearance of the mayor's veto in any charter. The power of appointment was shared by the upper branch and the mayor, the former nominating two persons for each position from whom the mayor might select the appointee. This is the beginning of the separation of legislative and executive powers in American city government. It is to be noted that this charter was not modeled upon the constitution of the United States. The indirect election of the upper branch and the mayor was an indigenous development in Maryland. It appeared first in the Maryland constitution of 1776, where it was employed for the election of senators.

SOURCE—William Kilty, *The Laws of Maryland* (Annapolis, 1800), II, Acts of 1796, Chap. LXVIII. Republished by the Baltimore City Library, in the *Records of the City of Baltimore, 1797-1813* (Baltimore, 1906), I-X.

An ACT to erect Baltimore-town, in Baltimore county, into a city, and to incorporate the inhabitants thereof.

WHEREAS it is found by experience that the good order, health, peace and safety, of large towns and cities cannot be preserved, nor the evils and accidents to which they are subject avoided or remedied, without an internal power, competent to establish a police and regulation fitted to their particular circumstances, wants and exigencies; therefore,

II. BE IT ENACTED, *by the General Assembly of Maryland*, That Baltimore-town, in Baltimore county, shall be and is hereby erected into a city, by the name of The City of Baltimore, and the inhabitants thereof constituted a body politic and corporate, by the name of The Mayor and City Council of Baltimore, and as such shall have perpetual succession, and by their corporate name may sue and be sued, implead and be impleaded, grant, receive, and do all other acts, as natural persons, and may purchase and hold real, personal and mixed property, or dispose of the same for the benefit of the said city, and may have and use a city seal, which may be broken or altered at pleasure; the city of Baltimore shall be divided into eight wards, each ward to contain, as nearly as may be, an equal number of inhabitants; the first division shall be made by seven respectable citizens, or a majority of them, to be appointed by the governor and council; and the corporation of the said city thereafter, from time to time, shall cause a correct division of the said city to be made into eight wards, according to the actual number of inhabitants, which divisions shall be repeated as often as the increase or decrease of inhabitants in any ward or wards shall render it necessary, in order to a just representation, and when the inhabitants shall increase to forty thousand, it shall then be divided into fifteen wards, and for any additional increase of inhabitants one new ward only shall be added for every twenty thousand, in order to preserve, as nearly as may be, an equal number of voters in each ward.

III. AND BE IT ENACTED, That the council of the city of Baltimore shall consist of two branches, one whereof shall be denominated The First Branch, the other The Second Branch; the first branch shall consist of two members, of the most wise, sensible and discreet of the people, from each ward, who shall be citizens of the United States, above twenty-one years of age, residents of the said town three years preceding their appointment, and assessed on the books of the assessor to the amount of one thousand dollars;

and the voters for the first branch of the said city council shall have the same qualifications as voters for delegates to the general assembly of this state; and the said elections shall be made *viva voce*.

IV. AND BE IT ENACTED, That the first election for members of the first branch of the city council shall be held on the third Monday in February, on thousand seven hundred and ninety-seven, and on the third Monday in February in each and every year thereafter, at such place in each ward as the judges of the election, in the first instance, and afterwards as the corporation by ordinance, shall direct; the election shall be held by wards, and no person shall be entitled to vote for any but the members of the ward of which he is a resident; three respectable citizens, residents in each ward, or a majority of them, in the first instance to be appointed by the commissioners of Baltimore-town, and afterwards by the mayor of said city, shall be judges of the elections in their respective wards, and they shall have power to appoint their respective clerks.

V. AND BE IT ENACTED, That the polls in each ward shall be kept open one day, from eight o'clock in the morning till six o'clock at night, and no longer, and when closed, the several judges shall, within three days after such election, notify to the persons having the greatest number of legal votes in their respective wards that they are duly elected; and they shall make their return, and deposit their polls, in the first instance with the present clerk of the commissioners of Baltimore-town, and thereafter as shall be directed by ordinance; any vacancy happening in the first branch of the city council shall be filled up without delay from the ward where such vacancy happened, in such manner as shall be hereafter directed by ordinance.

VI. AND BE IT ENACTED, That the second branch shall consist of eight members, who shall be chosen from the several wards, and no person shall be eligible as a member of the second branch, who is not of the full age of twenty-five years, a citizen of the United States, and a resident of the said town four years previous to his election, and assessed on the books of the assessor to the amount of two thousand dollars; and the members of the second branch shall continue in office for the term of two years next succeeding the time of their election.

VII. AND BE IT ENACTED, That the mayor of the said city, and the members of the second branch of the city council,

shall be chosen in the following manner, to wit: That each ward, at the time and place of electing the first branch of the city council, shall elect, *viva voce*, one person qualified to be a member of the first branch, as elector of the mayor and of the members of the second branch of the city council, on the third Monday in January next, and on the same day every second year thereafter, (a) who shall, on the third Monday of February, one thousand seven hundred and ninety-seven, and on the same day every second year thereafter, meet at the court-house, or some other convenient place in the said city, and elect, by ballot, a mayor, and eight members of the second branch, to serve for two years thereafter; no person shall be eligible for mayor who is not of known integrity, experience and sound judgment, twenty-five years of age, ten years a citizen of the United States, and five years a resident of Baltimore-town, or city, next preceding the election; and in case two or more persons shall have an equal number of votes for mayor, or members of the second branch, the said electors shall determine, by lot, which of the persons, having an equal number of votes, shall be appointed to the office of mayor, or second branch of the city council, as the case may require; the said electors of the mayor and of the members of the second branch, before they proceed to elect, shall swear, or affirm, as the case may be, that they will elect, without favour, partiality or prejudice, such person for mayor, and such persons as members of the second branch of the city council, as they in their judgment and conscience believe best qualified for the said offices, and having the other qualifications required by this act; that the said electors shall be judges of the elections, returns and qualifications, of their members, but no person shall be elector of the mayor and member of the first branch of the city council at the same time; any vacancy happening in the electors of the mayor, shall be filled up from the ward where such vacancy happened, without delay, in such manner as shall be hereafter directed by ordinance, and any vacancy of the mayoralty happening, the same shall be filled up without delay by the electors of the mayor for the time being, for the remainder of the term; and all vacancies happening in the said second branch shall be filled up by the electors aforesaid.

VIII. AND BE IT ENACTED, That the city council shall hold their first session at the court-house in Baltimore, or at any other place within said city, on the second Monday in February, one thousand seven hundred and ninety-seven, and they shall meet

on the second Monday of February in every year thereafter, but the mayor may summon them to convene whenever and as often as it may appear to him that the public good may require their deliberations; three-fourths of the city council shall be a quorum to do business, but a smaller number may adjourn from day to day; they may compel the attendance of absent members, in such manner, and under such penalties, as they may by ordinance provide; they shall appoint their respective presidents, who shall preside at all their sessions, and shall vote on all questions; they shall settle their rules of proceedings, appoint their own officers, regulate their respective fees, and remove them at pleasure; they shall judge of the elections, returns and qualifications, of their own members, and may, with the concurrence of three-fourths of the whole, expel any member for disorderly behaviour, or malconduct in office, but not a second time for the same cause; they shall keep a journal of their proceedings, and enter the yeas and nays on any question, resolve or ordinance, at the request of any member, and their deliberations shall be public; they shall ascertain, by ordinance, the compensation of their services, which shall not be increased during their continuance in office; the second branch of the city council shall nominate two citizens to each office which may arise under this act, and the ordinances of said corporation, and the mayor shall appoint and commission one of said nomination to fill the respective offices during pleasure; and the said mayor shall appoint proper persons to fill up all vacancies during the recess of the session, to hold such appointment until the ensuing session; the city council shall settle the salary of the first mayor at their first session of the second year, and the salary of the succeeding mayors shall be settled previously to their appointment; all ordinances or acts passed by the city council shall be sent to the mayor for his approbation, and when approved by him, shall become a law, and shall then be obligatory upon the several courts and justices of the peace of Baltimore county, sheriff and constables within the limits of the city of Baltimore, and all other persons within the limits of said city, to every intent and purpose, as the acts of the general assembly of Maryland, provided the said laws or ordinances shall not contain anything repugnant to the constitution or laws of this state, or the United States; but if the said mayor shall not approve of such ordinances or acts, he shall return the same within five days, with his reasons in writing therefor, and if three-fourths of both branches of the city council, on reconsidera-

tion thereof, approve of the ordinance or law, it shall then be an ordinance or law, to all intents and purposes; and if any ordinance or law shall not be returned by the mayor within five days after it shall have been presented to him, the same shall be a law, in like manner as if he had approved it, unless the city council, by their adjournment, prevent its return.

IX. AND BE IT ENACTED, That the corporation aforesaid, shall have full power and authority to enact and pass all laws and ordinances necessary to preserve the health of the city; prevent and remove nuisances; to prevent the introduction of contagious diseases within the city, and within three miles of the same; to establish night watches or patrols, and erect lamps; to provide for a general survey of the city and precincts; to ascertain, when necessary, the boundaries and location of streets, lots, lanes and alleys thereof; to establish new streets, lanes and alleys, with the consent of the proprietors of the ground, and to alter and to streighten streets, lanes and alleys, with the consent of the proprietors of the lots or houses adjoining such streets, lanes and alleys; to provide for the preservation of the navigation of the bason, and Patapsco river within the limits of the city of Baltimore, and four miles thereof; for cleaning and deepening the bason and docks, and for regulating the station, anchoring and mooring of vessels; but no tax, direct or indirect, shall be laid on that part of Baltimore called Deptford Hundred for the preservation of the navigation of the bason, or for cleaning or deepening the bason or docks therein; to provide for licensing and regulating auctions and pawnbrokers within the city and precincts thereof; to restrain or prohibit gaming, and to provide for licensing, regulating or restraining, theatrical or other public amusements within the city or precincts; to erect and repair bridges; to pave and keep in repair all necessary drains and sewers, and to pass all regulations necessary for the preservation of the same; to establish and regulate inspections within the city, subject to the future acts of the general assembly; to regulate and fix the assize of bread; to provide for the safe keeping and preservation of the standard of weights and measures fixed by congress, and for the regulating thereby all weights and measures used within the city and precincts; to regulate party walls and partition fences; to erect and regulate markets; to provide for licensing and regulating, (with the consent of the Maryland insurance fire company,) the sweeping of chimnies, and fixing the rates thereof, within the city and precincts,

and for regulating the sweeping of any chimney, by the neglect of which the safety of the city may be endangered, and to ascertain the width of those to be built in the city; to establish and regulate fire wards and fire companies; to regulate and establish the size of bricks that are to be used in the houses to be built in the city; to erect and regulate pumps in the streets, lanes and alleys; to impose and appropriate fines, penalties and forfeitures, for the breach of their by-laws or ordinances; to lay and collect taxes, not exceeding two dollars in the hundred pounds in any one year, except as before is excepted; to enact by-laws for the prevention and extinguishment of fire; and to pass all ordinances necessary to give effect and operation to all the powers vested in the corporation of the city of Baltimore; provided, that the by-laws or ordinances of the said corporation shall be in no wise obligatory upon the persons of nonresidents of the said town, being citizens of this state, unless in cases of intentional violation of by-laws or ordinances previously promulgated; all the fines, penalties and forfeitures, imposed by the ordinances of the corporation of the city of Baltimore, if not exceeding twenty dollars, shall be recovered before a single magistrate, as small debts are by law recoverable, and if such fines, penalties and forfeitures, do exceed the sum of twenty dollars, then to be recovered by action of debt, in Baltimore county court, in the name of the corporation, and for the use of the city of Baltimore.

X. . . .¹ the mayor shall, in virtue of his office, have and exercise all the jurisdiction and powers of a justice of the peace, except as to the recovery of small debts, and may call upon any officer of the city intrusted with the receipt and expenditure of public money for a statement of his accounts, as often as he or the corporation may conceive it necessary; he shall see that the ordinances are duly and faithfully executed, and shall report annually to the corporation, during the first five days of their session, a general state of the city, with an accurate account of the money received and expended, to be published for the information of the citizens; the mayor and corporation of the city of Baltimore, the judges and clerks of the elections, and all other officers of the city, before they enter upon the execution of their respective offices shall severally take the following oath or affirmation: "I do solemnly swear, or affirm, as the case may be, that

¹ The powers of the existing local authorities,—town commissioners, special commissioners and port wardens,—are transferred to the new city corporation.

I will faithfully execute the office of —, to the best of my knowledge and ability, without favour, affection or partiality.” . . .

XV. This act to continue in force until the first day of September, seventeen hundred and ninety-eight, and the end of the next session of assembly which shall happen thereafter.¹

11. Amendment to the Charter of Philadelphia, 1799.¹

This amendment is peculiarly significant because it is the first instance in American municipal government of a grant to the mayor of the power of appointing the officers of the corporation. It is to be noted that there is not even a requirement that the mayor's appointments be confirmed by the city council or either of its branches.

SOURCE—*Pennsylvania Statutes at Large*, 1682-1801 (Harrisburg, 1911), XVI, 345-346.

(Section IV, P. L.) And whereas doubts have arisen upon the construction of the act, entitled, “An act to alter and amend the several acts of the general assembly of this commonwealth, incorporating the city of Philadelphia,” and it is necessary that the same be explained and amended.

[Section IV.] Be it further enacted by the authority aforesaid, That the mayor of the city of Philadelphia shall appoint all and every the officer and officers of the corporation, whose authorities and powers shall have been, or hereafter shall be, given or established by any resolution or ordinance by the select and common councils of the said city of Philadelphia, excepting only the treasurer of the corporation, and the clerks, messengers and door-keepers of the said councils, who shall be appointed as heretofore.

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the select and common councils shall have all and singular the powers and authorities, rights and privileges, incident to the corporation, and to the well governing thereof, which were formerly vested in the mayor, aldermen and common council, by an act, entitled, “An act to incorporate the city of Philadelphia,” passed the eleventh day of March, one thousand seven hundred and eighty-nine, which are not otherwise by law directed and provided for.

¹ The charter was made permanent by Chapter 54, Act of 1797, except as altered by that act.

12. Extract from the Debates of the New York State Constitutional Convention of 1821.

This extract throws interesting light upon the character of the government of New York City in the years preceding 1821.

SOURCE—*Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New York* (Albany, 1821), 159-161, 391-394, 479-482, 663-664.

Mr. VAN BUREN, from the committee on so much of the constitution as relates to the power of appointment to office, and the tenure thereof, reported, that in the opinion of the committee, the following amendments of the constitution ought to be made, viz: . . .

CIVIL OFFICERS

Resolved, that instead of the mode now provided for, the appointment of civil officers, the constitution ought to be so amended as to direct their election and appointment in the manner following: . . .

4th. That the mayors and clerks of all the cities in this state, except the city of New-York, be appointed by the common councils of the said respective cities.

5th. That there shall be elected in every town in this state by the persons qualified to vote for members of the legislature, so many justices of the peace as the legislature may direct, not exceeding four in any town. That every person so elected a justice of the peace may hold his office for four years unless removed by the county court or court of common pleas, for causes particularly assigned by the judges of the said court. And that no justice of the peace shall be so removed until notice is given him of the charges made against him, and an opportunity afforded him of being heard in his defence.

6th. That all officers under the authority of the government of this state in the city of New-York, whose appointment is not vested in the common council of said city, or in the governor, by and with the advice and consent of the senate, shall be appointed in the following manner, to wit: The inhabitants of the respective wards of that city, qualified to vote for members of the legislature,

shall elect one person in each of the said wards, and the persons so elected shall constitute a board of electors for the appointment and removal of all such officers—That immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes—The seats of the electors of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year, and of the third class at the expiration of the third year; so that one third may be chosen every year; and if vacancies happen by resignation or otherwise, they shall be supplied by the wards in which they happen, in the manner above mentioned—And that no such elector shall be eligible to any office within their gift, during the time for which he shall be elected. . . .

TENURE OF OFFICE

Resolved, That the tenure of the offices herein after named be as follows. . . .

7. Mayors of cities to be appointed annually. . . .

The chairman then read the 10th clause.¹

Mr. RADCLIFF moved to strike out the words, “except the (mayor of) the city of New-York.”

Mr. FAIRLIE opposed the motion. He thought it was inexpedient to make the mayor the mere creature of the common council.

Mr. JAY was also opposed to the motion of Mr. Radcliff. He said the mayor of the city might otherwise be opposed to the executive, and it was important that there should be an union and harmony of sentiment between them. The mayor of that city has great power, which is more arbitrary within its jurisdiction, than that of the president of the United States. He (Mr. J.) was not in favour of accumulating the power at the seat of government, but there was a moderation to be observed in all things, and he feared we were verging to an unreasonable jealousy of the general appointing power. The mayor was the preserver of the peace, and the head of the police of that city. It was proper, therefore, that he should be independent of the city in the exercise of his power,

¹ This is obviously an error, for the subsequent debate makes it evident that the clause under consideration is the fourth, of the report on civil officers.

which might require him to suppress mobs, of which there had been one of three or four days continuance in that city.

Mr. MUNRO concurred with his honourable colleague. The proposition would reduce the mayor to a mere chairman of the corporation.

Mr. SHARPE supported the motion; and hoped if the mayors of other cities were to be appointed by the common council, New-York would not be an exception. A great part of his judicial power had been given to the first judge.

Mr. RADCLIFF had hoped that the principle of having officers elected by the people had been established by this Convention; and therefore he would not enter into a discussion of its propriety. Have we not examples on this subject? The city of Philadelphia appoint their mayor by the common council, and no evils are known to result from that method there. In the city of New-York, the duties formerly incumbent on the mayor are now divided. He is merely a ministerial officer, who attends to the police and good order of the city. He, to be sure, appoints carmen and marshals; but he should apprehend no danger from him on that account. With respect to this city being more exposed to mobs than other places, he did not think it was the case. We have been told by a gentleman from Westchester, that within his recollection there was a great mob in that city. It was not a political mob, but a mob of doctors.

Mr. FAIRLIE said the mayor and sheriff of New-York were charter officers, and with these we ought not to meddle.

Mr. JAY said there had been tumults in the city of New-York, and it was fair to argue to the future from the past. He had not said there had been political mobs, but it was immaterial to him if his house was to be torn down, and his life jeopardized, whether it was done by a political mob, or any other kind of mob. He was in the political minority, and for that very reason he wished the executive of the city might act in union with the executive of the state, that the stronger arm of the latter may be lent to the former, to protect him from outrages. It was indeed peaceable at present in that city. He hoped it would so continue. But it was not correct to say that because the sun shines to-day, we will have no storm to-morrow.

In relation to the powers of the mayor—it is true that they have been divided—but he is not divested of them. In that division, all his judicial powers are distinctly reserved, and it was only

to relieve him from too heavy a burthen that a separation was authorized, but he retains the same powers he ever had, and may at any time resume their exercise.

Mr. SHARPE said, if mobs and tumults should arise, a mayor elected by the corporation would be as well qualified to quell them as a magistrate elected at Albany.

Col. YOUNG thought that the aldermen and assistant aldermen were not of a character to encourage or favour tumults and mobs. He believed the corporation was a very proper tribunal for the appointment of the mayor.

Mr. MUNRO said that the mayor and corporation would completely control the elections of the city, if the former were appointed by the latter.

Mr. VAN BUREN would vote for the motion, although it was not contemplated to appoint the mayor by the general appointing power, as had by some been supposed.

The CHIEF JUSTICE remarked, that the corporation of New-York had heretofore been, and now were, composed of men who would not be likely to encourage mobs. A case, however, might occur, when men of a different character might be elected, and when nothing could save the city. He should, however, vote for the motion, as he believed the corporation better qualified than any power at Albany.

Question taken, and decided as follows: [Ayes, 87, Nays, 16,]

. . . [The sixth section of the report on civil officers was read.]

Mr. RADCLIFF had hoped that some gentleman would provide a substitute for this clause; but as it had not been done, he must move to have it stricken out, that some other appointing power could be provided for the city of New-York. If the committee would take it into consideration, they would find that the city of New-York had many officers not required in the other parts of the state, which rendered it more difficult to settle the appointing power in that city than in any other part of the state. The city and county of New-York were co-extensive—there were no county regulations distinct from those of the city—which was different from the other cities and counties in the state. This rendered it necessary that they should have a different regulation from those places which have both city and county regulations in common. The plan proposed by the gentleman from Orange, for the appointment of justices of the peace, and adopted by the committee, would

not answer for the city of New-York: the court of common pleas, in the city of New-York, was composed of the aldermen of the city and first judge—they all belonged to the corporation except the first judge; therefore, for the court to make a nomination, distinct from the nomination of the supervisors, would be absurd. The plan adopted for other places than the city of New-York, does not at all apply to the case of that city—it would, in fact, amount to this, that the common council should make the appointments; and therefore I am of the opinion that it would be the simplest and best way, to give to the council the appointment of such officers as are in the counties appointed by the supervisors and judges of common pleas. As the sheriff, clerks, and mayor are provided for, we have but one class of officers corresponding with the officers of counties; and that is the justices of the peace. Mr. R. went into a minute description of the different orders of justices in the city of New-York, and their respective duties. He concluded by expressing an opinion that the common council would be as proper a body to exercise this power, in appointing justices of the peace, as any other body of men; and he should not object to the first judge associating with them, although it would probably be as well to omit him. With respect to all other officers of that city, not otherwise expressly provided for, he should be willing to leave it to the discretion of the legislature to determine; and with that view he would offer his amendment, as follows:

“That the justices of the peace in the city and county of New-York, including the official justices, the justices of the marine court and the district justice, and the clerks of the said justices, respectively, be appointed by the common council of said city; and all other officers in said city whose election or appointment is not provided for by this constitution, shall be chosen, or appointed within the said city, in such manner as the legislature may from time to time direct.”

Mr. VAN BUREN could not discover why the common council which had been thought a proper body for the appointment of the other officers, was not also adequate to other trusts. He therefore submitted the following proposition:

“That all the city or state officers in the city of New-York whose appointments are not otherwise provided for in this constitution, shall be appointed by the common council of the said city and county and shall hold their respective offices during the pleasure of the said council.”

Mr. MUNRO moved that it be laid on the table.

Mr. RADCLIFF supported this motion. The corporation had a vast patronage; and it was very questionable whether it ought to be extended. He hoped that the proposition of the gentleman from Otsego would lie on the table.

Col. YOUNG would give to New-York the same mode of appointment, and a like tenure of office, as had been given to the country. He would go so far as to expunge the sixth section. He thought the common council equally capable of making appointments, as the supervisors. He was willing, in the event of a tie, to let the first judge decide.

Mr. FAIRLIE wished it might be postponed till to-morrow.

Mr. MUNRO hoped we should not dispose of offices to the amount of half a million in haste.

Mr. VAN BUREN concurred with the gentleman from Westchester (Mr. Munro) in believing that this subject required deliberation.

Mr. TOMPKINS hoped we should postpone and reflect on this subject. From his past and present connexion with that city, he knew the importance of the question.

The CHIEF JUSTICE thought we should pause before we gave such an enormous power to the municipal authorities of that city.

Mr. RADCLIFF thought we might at least take the question on striking out the clause.

Mr. JAY was in favour of the postponement. The common council, he said, was the legislature of that city. They had the power of taking private property for public use, and of assessing others to pay for it. They had power to make contracts—a power which they had pretty liberally exercised—very necessary though very despotic powers in relation to the preservation of health—and about four hundred offices were already at the disposal of that body. If state patronage would poison the senate, as gentlemen had supposed, he would submit it whether there was not equal reason to fear that city patronage might poison the common council.

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[The discussion of the sixth section was continued.]

Mr. JAY. Before the committee decide upon the questions now before them, I beg leave to call their attention to the patronage now exercised by the mayor and common council of the city of New York. It is proposed that the mayor, who has heretofore been

appointed by the state, shall hereafter be appointed by the common council, and of course be dependent upon it. Should this proposition be adopted, you will increase the patronage of that body, not only by enabling them to bestow the office of mayor, but also by placing virtually at their disposal, all the patronage now vested in him. This, though consisting of small appointments, is of a nature to give immense influence to him who possesses it. The mayor grants, or refuses, at his own pleasure, all tavern licences, and these exceed two thousand. He grants and revokes at his own pleasure licences to about fifteen hundred carmen, and I believe, though I am not certain, to several hundred other carmen, who carry earth, and are called dirt carmen. He in like manner licenses all the hackney coaches and all the public porters. He appoints the high constable, first marshal, and all the marshals of the city, amounting to about sixty, and he grants licenses to all the pawn-brokers. These last, however, are, I believe, entitled to licenses on paying for them.

I do not mean to assert that the powers of the mayor are greater than they ought to be, or that they are improperly exercised. But it will be perceived that near four thousand persons depend at least for a part of their subsistence on his will and pleasure. Independently of this patronage, the common council appoint a counsellor, whose office, in point of emolument, is more valuable than that of the Chancellor of the state; an attorney, whose office is more lucrative than that of the chief justice of the supreme court; a comptroller, a treasurer, a public administrator, a superintendent of the alms-house, a keeper of the city prison, a keeper of the penitentiary, a street commissioner, a city inspector, a chief engineer, and a superintendent of repairs, all lucrative offices. They appoint assessors and collectors of assessments, all the city surveyors, six clerks of justices of the peace, who receive salaries of seven hundred and fifty dollars a year, an inspector of weights and measures, all the sealers of weights and measures, a physician to the city prison, a physician and surgeon to the alms-house, captains of the watch, clerks of the markets, a clerk of the common council, who is also clerk to the board of health, and to the board of supervisors, measures of grain, lime, and coal, inspectors of wood, weigh masters, pound keepers, health wardens and fire wardens, and a number of subaltern officers. All the stalls, except about a dozen or fifteen, in all the markets, belong exclusively to the corporation, and some of them are of great value. I

have known one of those which are private property, sold for fifteen hundred dollars, and have been told by the owner of another, that he had been offered for it three thousand dollars. These stalls were distributed among the butchers by the common council, and until lately without requiring a rent. Now, sir, I would ask whether, in proportion to the inhabitants of the city, this mass of patronage is not already nearly as great as that possessed by the council of appointment? But the common council has still other means of influence. The contracts for lamps and oil, for supplying the poor, for paving the streets, removing earth, for building and repairing wharves, and for many other purposes, amount annually to an enormous sum. In making this statement, I have been obliged to depend wholly upon my memory, having no documents to refer to; but should I have committed errors, some of the members from New-York who hear me, and who are better acquainted with the corporation than I am, will, I hope, correct me. And now I would ask, whether it is prudent to commit to this body the distribution of the important and valuable offices mentioned in the resolution upon your table? If the accumulation of patronage in the council of appointment has been proved by experience to be so pernicious as to induce us to abolish it by an unanimous vote, is it likely that a similar accumulation in the common council will have a beneficial effect? Is it not possible that it may have an unfavourable influence on their legislation, and may they not, by means of it, establish their power so firmly that even unjust and oppressive measures may be pursued with impunity? I have no disposition to speak of the common council with disrespect, but it cannot be disrespectful to say of them, that they are neither more pure, nor more enlightened, than the senate of the state. Why, then, should it be supposed that they are better qualified to select officers fitted to serve the public? With respect to the precise question now before the committee, I concur with the honourable gentleman from Richmond (Mr. Tompkins) that the health officer should be appointed by the governor and senate. If either of the three health commissioners should be chosen by the common council, it is the resident physician. But as to the commissioner of the health office, his functions seem to be misunderstood. It is not his duty, as has been supposed, to superintend the removal of nuisances; that is the duty of a municipal officer called the city inspector. He receives and disburses the monies raised and appropriated by the state for the support

of the marine hospital, and the other objects connected with the quarantine establishment, and ought, therefore, in my opinion, to be commissioned by the state. I do not mean at present to repeat the considerations which I urged on a former occasion, not to detain the committee by additional remarks; but I hope they will weigh the consequences maturely, before they transfer to the common council the power of appointing to the important offices mentioned in the resolution submitted by the gentleman from New-York. . . .

Mr. E. [Edwards] animadverted upon the remarks of the gentleman from Westchester, (Mr. Jay), and contended that the patronage of the corporation of New-York was altogether less than would be inferred from his statement, and expressed his belief that the whole amount of salaries paid by the corporation did not exceed \$25,000 per annum. He thought there was no danger in confiding the appointing powers to the common council. They were annually elected, and as the people could not assemble en masse, this was bringing home to them the appointment, as far as was practicable. . . .

Mr. SHARPE. . . . It had been said that the patronage of the mayor was enormous. This was not correct to the extent that it seemed to be supposed. With respect to carmen and porters—where was the importance of the patronage? Somebody must sign the licenses—and for what purpose? For his benefit, or to his emolument? Not at all. It is merely for the security of the public, in order that if a person of that description should run away with a man's trunk, by knowing the number of his cart, or barrow, the fraud might be detected. Mr. S. also examined other offices of similar local description, to shew that the patronage respecting them was not important, and that it could not be dangerous to confide it to those who were annually elected by ten different wards in the city. Mr. S. was willing that all state officers should be appointed by the general appointing power of the state; but with respect to the residue of others who were not provided for, they should be designated and appointed either directly by the people, or by those who derive their authority immediately from the people; and he applied this principle to the various offices which had not been hitherto provided for. Mr. S. thereupon moved that the committee rise and report, with the view of referring the subject to a select committee. . . .

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[The following provisions governing the appointment and tenure of civil officers, were finally adopted by the convention, and were incorporated in the Constitution of 1826:]

ARTICLE FOURTH

Sec. VII. The governor shall nominate, by message, in writing, and with the consent of the senate, shall appoint all judicial officers, except justices of the peace, who shall be appointed in manner following; that is to say: The board of supervisors in every county in this state, shall, at such times as the legislature may direct, meet together; and they, or a majority of them so assembled, shall nominate so many persons as shall be equal to the number of justices of the peace, to be appointed in the several towns in the respective counties. And the judges of the respective county courts, or a majority of them, shall also meet and nominate a like number of persons; and it shall be the duty of the said board of supervisors, and judges of county courts, to compare such nominations, at such time and place, as the legislature may direct: And if on such comparison, the said boards of supervisors and judges of county courts, shall agree in their nominations, in all, or in part, they shall file a certificate of the nominations in which they shall agree, in the office of the clerk of the county; and the person or persons named in such certificates, shall be justices of the peace: And in case of disagreement in whole, or in part, it shall be the farther duty of the said boards of supervisors, and judges respectively, to transmit their said nominations, so far as they disagree in the same, to the governor, who shall select from the said nominations, and appoint, so many justices of the peace, as shall be requisite to fill the vacancies. Every person appointed a justice of the peace, shall hold his office for four years, unless removed by the county court, for causes particularly assigned by the judges of the said court. And no justice of the peace shall be removed, until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

. . . .

Sec. X. The mayors of all the cities in this state, shall be appointed annually, by the common councils of the respective cities.

. . . .

Sec. XIII. The clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of

New-York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court; and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts or by the governor, with the consent of the senate, as may be directed by law.

Sec. XIV. The special justices, and the assistant justices, and their clerks in the city of New-York, shall be appointed by the common council of the said city; and shall hold their offices for the same term, that the justices of the peace, in the other counties of this state, hold their offices, and shall be removable in like manner.

Sec. XV. All officers heretofore elective by the people, shall continue to be elected; and all other officers, whose appointment is not provided for by this constitution, and all officers, whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law, be directed.

Sec. XVI. Where the duration of any office is not prescribed by this constitution, it may be declared by law; and if not so declared; such office shall be held during the pleasure of the authority making the appointment.

13. State-Appointed Officials in the City of New York, 1821.

This selection includes a list of all the civil officers in New York City appointed by the state council of appointment. It is very illuminating as to the extent of state interference in municipal government at that period.

SOURCE—*Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New-York* (Albany, 1821), 397.

The following communication was received from the secretary of state, pursuant to the resolution of yesterday:

STATE OF NEW-YORK,

Secretary's Office, Albany, October 11, 1821.

Sir—In obedience to a resolution of the honourable the Convention of this state, of yesterday, requesting me "to lay before them a list of the civil officers in the city of New-York," I have the honour of submitting to them, through you, the enclosed list

of the civil officers, holding their commissions in that city, under the council of appointment.—Some of the officers in that list may have ceased to act, or are disqualified from acting; but there is nothing in the possession of this department, enabling me to ascertain their number.

I have the honour to be, very respectfully, your obed't servant.

J. V. N. YATES, Secretary of State.

The Hon. Daniel D. Tompkins }
President of the Convention }

A list of the civil officers in the city of New-York, under the council of appointment.

No. of Officers.

First judge,	1
Mayor,	1
Recorder,	1
Surrogate,	1
District attorney,	1
Sheriff,	1
Coroner,	1
Register,	1
Clerk of the city and county,	1
Clerk of the oyer and terminer and sessions,	1
Clerk of the sittings, and circuit court,	1
Special (or police) justices,	3
Police clerk,	1
Justices of the marine court	3
Assistant justices,	6
Auctioneers,	36
Resident physician,	1
Commission of the health office,	1
Health officer,	1
Harbour masters,	2
Master and wardens of the port,	6
Branch pilots by way of Sandy Hook,	28
Inspector general of staves and heading,	1
Cullers of staves and heading,	18
Assistant state sealer,	1
Inspector of flour,	1
Do. beef and pork,	1

Inspector of fish,	3
Do. fish oil,	1
Do. pot and pearl ashes,	5
Do. lumber,	17
Do. hops,	1
Do. leather	2
Do. distilled spirits,	1
Inspectors of the state prison at New-York,	7
Commissioners of excise,	1
Directors of the bank of America,	2
Do. do. New-York,	2
Do. do. Mechanics,	1
Do. do. Phoenix,	1
Do. do. Franklin,	2
Examiners in chancery,	5
Masters in chancery,	71
Commissioners to acknowledge deeds, &c.	114
Public notaries,	343
<hr/>	
Total,	709

14. The Charter of Boston, 1822.

Up to 1822, Boston had been governed by a town meeting and board of selectmen after the manner of New England towns in general. The town, however, had for some time been too large for such a form of government. It was impossible for all the voting citizens to assemble in any one place, and general dissatisfaction had long been expressed. The charter of 1822 is interesting because it followed as closely as possible the town type of government. For the town meeting is substituted a common council of forty-eight members, and for the board of selectmen, a mayor and board of aldermen. The mayor was elected directly by the people, but had little more power than that of presiding officer of the board of aldermen, of which he was a member with the right to vote.

SOURCE—*Laws of the Commonwealth of Massachusetts, 1818-1822* (Boston, 1822), Chap. CX.

An Act establishing the City of Boston.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That the inhabitants of the Town of Boston, for all purposes, for which towns are by law incorporated, in this Commonwealth, shall continue to be one body politic, in fact and in name, under the style and denomination of the City of Boston; and as such, shall have, exercise, and enjoy, all the rights, immunities, powers, and privileges, and shall be subject to all the duties and obligations, now incumbent upon, and appertaining to said town, as a municipal corporation. And the administration of all the fiscal, prudential, and municipal concerns of said city, with the conduct and government thereof, shall be vested in one principal officer, to be styled the Mayor; one select Council, consisting of eight persons, to be denominated the Board of Aldermen; and one more numerous Council, to consist of forty eight persons, to be denominated the Common Council; which Boards in their joint capacity, shall be denominated the City Council, together with such other Board of Officers, as are herein after specified.

SEC. 2. *Be it further enacted,* That it shall be the duty of the Selectmen of Boston, as soon as may be, after the passing of this act, to cause a new division of the said town to be made into twelve wards, in such manner as to include an equal number of inhabitants in each ward, as nearly as conveniently may be, consistently with well defined limits to each ward; including in such computation of numbers of inhabitants, persons of all descriptions, and taking the last census, made under the authority of the United States, as a basis for such computation. And it shall be in the power of the City Council, herein after mentioned, from time to time, not oftener than once in ten years, to alter such division of wards, in such a manner as to preserve, as nearly as may be, an equal number of inhabitants in each ward.

SEC. 3. *Be it further enacted,* That on the second Monday of April, annually, the citizens of said city, qualified to vote in city affairs, shall meet together, within their respective wards, at such time and place, as the Mayor and Aldermen may, by their warrant, direct and appoint: and the said citizens shall then choose by ballot, one Warden and one Clerk, who shall be a resident in said ward, who shall hold their offices for one year, and until others shall be appointed in their stead. And it shall be the duty of such Warden

to preside at all meetings of the citizens of such ward, to preserve order therein; and it shall be the duty of such Clerk, to make a fair and true record, and keep an exact journal of all the acts and votes of the citizens, at such ward meetings; to deliver over such records and journals, together with all other documents and papers held by him, in said capacity, to his successor in such office. And if, at the opening of any annual meeting, the Warden of such ward should not be present, the Clerk of such ward shall call the citizens to order, and preside at such meeting, until a Warden shall be chosen by ballot. And if, at any other meeting, the Warden shall be absent, the Clerk in such case, shall so preside, until a Moderator, or Warden, *pro tempore*, shall be chosen; which may be done by nomination and hand-vote, if the Clerk so direct. At such meeting also, five Inspectors of Elections shall be chosen, for such ward, being residents therein, by ballot, to hold their offices for one year. And it shall be the duty of the Warden and Inspectors, in each ward, to receive, sort, count, and declare all votes, at all elections within such ward. And the Warden, Clerk, and Inspectors, so chosen, shall respectively, be under oath, faithfully and impartially to discharge their several duties, relative to elections; which oath may be administered by the Clerk of such ward, to the Warden, and by the latter, to the Clerk and Inspectors, or by any Justice of the Peace of the County of Suffolk; and a certificate of such oaths having been administered, shall be entered in the record or journal, to be kept by the Clerk of such ward.

SEC. 4. *Be it further enacted*, That the Warden, or other presiding officer, of such ward meeting, shall have full power and authority to preserve order and decorum therein, and to repress all riotous, tumultuous, and disorderly conduct therein, and for that purpose, to call to his aid, any Constable, or other peace officer, and also to command the aid and assistance of any citizen or citizens, who may be present; and any peace officer, or other citizen, neglecting or refusing to afford such aid, shall be taken and deemed guilty of a misdemeanor. And such Warden shall also have power and authority, by warrant, under his hand, to cause any person or persons, who shall be guilty of any riotous, tumultuous, or disorderly conduct at such meeting, to be taken into custody, and restrained; *provided, however*, that such restraint shall not continue after the adjournment or dissolution of such meeting; *and provided, further*, that the person, so guilty of such disorderly conduct, shall be liable, notwithstanding such restraint, to be prose-

cuted and punished, in the same manner, as if such arrest had not been made.

SEC. 5. *Be it further enacted*, That the citizens of said city, qualified to vote in city affairs, at their respective ward meetings, to be held on the second Monday in April, annually, shall be called upon to give in their votes for one able and discreet person, being an inhabitant of the city, to be Mayor of said city, for the term of one year. And all the votes so given in, in each ward, being sorted, counted, and declared by the Warden and Inspectors of Elections, shall be recorded at large, by the Clerk, in open ward meeting; and in making such declaration and record, the whole number of votes or ballots, given in, shall be distinctly stated, together with the name of every person voted for, and the number of votes given for each person respectively; such numbers to be expressed in words at length: and a transcript of such record, certified and authenticated by the Warden, Clerk, and a majority of the Inspectors of Elections for each ward, shall forthwith be transmitted or delivered by such Ward Clerk, to the Clerk of the city. And it shall be the duty of the City Clerk, forthwith to enter such returns, or a plain and intelligible abstract of them, as they are successively received, upon the journal of the proceedings of the Mayor and Aldermen, or some other book to be kept for that purpose. And it shall be the duty of the Mayor and Aldermen to meet together, within two days after such election, and to examine and compare all the said returns, and to ascertain whether any person has a majority of all the votes given for Mayor: And in case a majority is so given, it shall be their duty to give notice thereof, in writing, to the person thus elected, and also to make the same known to the inhabitants of said city. But if, on such an examination, no person appears to have a majority of all the votes given for Mayor, the Mayor and Aldermen, for the time being, shall issue their warrants for meetings of the citizens of the respective wards, for the choice of a Mayor, at such time and place, as they shall judge most convenient: And the same proceedings shall be had in all respects, as are herein before directed, until a Mayor shall be chosen by a majority of all the voters, voting at such election. And in case of the decease, inability, or absence of the Mayor, and the same being declared, and a vote passed by the Aldermen and Common Council, respectively, declaring such cause, and the expediency of electing a Mayor, for the time being, to supply the vacancy thus occasioned, it shall be lawful for the Aldermen and Common

Council to meet in convention, and elect a Mayor to hold the said office, until such occasion shall be removed, or until a new election.

SEC. 6. *Be it further enacted*, That the citizens in their respective ward meetings, to be held on the second Monday of April, annually, shall be called upon to give in their votes for eight persons, being inhabitants of said city, to constitute the Board of Aldermen, for the ensuing year; and all the votes so given, being sorted, counted, and declared by the Warden and Inspectors, shall be recorded at large, by the Clerk, in open ward meeting; and in making such declaration and record, the whole number of votes or ballots given in, shall be particularly stated, together with the name of every person voted for, and the number of votes given for each person; and a transcript of such record, certified by the Warden and Clerk, and a majority of the Inspectors of each ward, shall, by the said Clerk, within two days, be transmitted to the City Clerk; whereupon the same proceedings shall be had, to ascertain and determine the persons chosen as Aldermen, as are herein before directed, in regard to the choice of Mayor, and for a new election, in case of the whole number required, not being chosen at the first election. And each Alderman, so chosen, shall be duly notified in writing, of his election, by the Mayor and Aldermen for the time being.

SEC. 7. *Be it further enacted*, That the citizens of each ward, qualified to vote as aforesaid, at their respective ward meetings, to be held on the second Monday of April, annually, shall be called upon to give in their votes for four able and discreet men, being inhabitants of said ward, to be members of the Common Council; and all the votes given in as aforesaid, in each ward, and being sorted, counted, and declared by the Warden and Inspectors, if it appear that four persons have a majority of all the votes given in, at such election, a public declaration thereof, with the names of the persons so chosen, shall be made in open ward meeting, and the same shall be entered at large, by the Clerk of such ward, in his journal, stating particularly, the whole number of votes given in, the number necessary to make a choice, and the number actually given for each of the persons, so declared to be chosen. But, in case four persons are not chosen at the first ballot, a new ballot shall be opened for a number of Common Councilmen, sufficient to complete the number of four; and the same proceedings shall be had, as before directed, until the number of four shall be duly chosen; *Provided, however*, that if the said elections cannot conveniently be

completed on such day, the same may be adjourned to another day, for that purpose, not longer distant than three days. And each of the persons so chosen, as a member of the Common Council, in each ward, shall, within two days of his election, be furnished with a certificate thereof, signed by the Warden, Clerk, and a majority of the Inspectors of such ward; which certificate shall be presumptive evidence of the title of such person to a seat in the Common Council: but such Council, however, shall have authority to decide ultimately, upon all questions relative to the qualifications, elections, and returns of its members.

SEC. 8. *Be it further enacted*, That every male citizen of twenty one years of age and upwards, excepting paupers, and persons under guardianship, who shall have resided within the Commonwealth one year, and within the city six months next preceding any meeting of citizens, either in wards, or in general meeting, for municipal purposes, and who shall have paid by himself or his parent, master or guardian, any state or county tax, which within two years next preceding such meeting, shall have been assessed upon him, in any town or district in this Commonwealth, and also every citizen who shall be, by law, exempted from taxation, and who shall be in all other respects, qualified as above mentioned, shall have a right to vote at such meeting, and no other person shall be entitled to vote at such meeting. . . .

SEC. 10. *Be it further enacted*, That the Mayor and Aldermen, thus chosen and qualified, shall compose one Board, and shall sit and act together as one body, at all meetings, of which the Mayor, if present, shall preside; but in his absence, the Board may elect a Chairman, for the time being. The said Board together with the Common Council, in convention, shall have power to choose a Clerk, who shall be sworn to the faithful discharge of the duties of his office, who shall be chosen for the term of one year, and until another person is duly chosen to succeed him; removable, however, at the pleasure of the Mayor and Aldermen, who shall be denominated the Clerk of the City; and whose duty it shall be to keep a journal of the acts and proceedings of the said Board, composed of the Mayor and Aldermen; to sign all warrants issued by them, and to do such other acts in his said capacity, as may, lawfully and reasonably, be required of him; and to deliver over all journals, books, papers, and documents, entrusted to him as such Clerk, to his successor in office, immediately upon such successor being chosen and qualified as aforesaid, or whenever he may be thereto required

by the said Mayor and Aldermen. And the City Clerk thus chosen and qualified, shall have all the powers, and perform all the duties, now by law, belonging to the Town Clerk of the Town of Boston, as if the same were particularly and fully enumerated, except in cases where it is otherwise expressly provided.

SEC. 11. *Be it further enacted*, That the persons, so chosen and qualified, as members of the Common Council of the said city, shall sit and act together as a separate body, distinct from that of the Mayor and Aldermen, except in those cases in which the two bodies are to meet in convention; and the said Council shall have power, from time to time, to choose one of their own members to preside over their deliberations, and to preserve order therein, and also to choose a Clerk, who shall be under oath, faithfully to discharge the duties of his office, who shall hold such office, during the pleasure of said Council, and whose duty it shall be, to attend said Council, when the same is in session, to keep a journal of its acts, votes and proceedings, and to perform such other services in said capacity, as said Council may require. All sittings of the Common Council shall be public; also all sittings of the Mayor and Aldermen, when they are not engaged in executive business. Twenty five members of the Common Council shall constitute a quorum for the transaction of business.

SEC. 12. *Be it further enacted*, That the Mayor of the said city, thus chosen and qualified, shall be taken and deemed to be the chief executive officer of said corporation; and he shall be compensated for his services by a salary, to be fixed by the Board of Aldermen and Common Council, in City Council convened, payable at stated periods; which salary shall not exceed the sum of five thousand dollars annually, and he shall receive no other compensation or emoluments whatever; and no regulations enlarging or diminishing such compensation shall be made, to take effect, until the expiration of the year, for which the Mayor then in office, shall have been elected. And it shall be the duty of the Mayor to be vigilant and active at all times, in causing the laws for the government of said city, to be duly executed and put in force; to inspect the conduct of all subordinate officers in the government thereof, and, as far as in his power, to cause all negligence, carelessness, and positive violation of duty, to be duly prosecuted and punished. He shall have power, whenever in his judgment, the good of said city may require it, to summon meetings of the Board of Aldermen and Common Council, or either of them, although the meeting of said

Boards, or either of them, may stand adjourned to a more distant day. And it shall be the duty of the Mayor, from time to time, to communicate to both branches of the City Council, all such information, and recommend all such measures as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort, and ornament of the said city.

SEC. 13. *Be it further enacted*, That the administration of police, together with the executive powers of the said corporation generally, together also, with all the powers heretofore vested in the Selectmen of the Town of Boston, either by the general laws of this Commonwealth, by particular laws relative to the powers and duties of said Selectmen, or by the usages, votes or by-laws of the said town, shall be, and hereby are vested in the Mayor and Aldermen, as hereby constituted, as fully and amply, as if the same were herein specially enumerated. . . .

SEC. 15. *Be it further enacted*, That all other powers now by law, vested in the Town of Boston, or in the inhabitants thereof, as a municipal corporation, shall be, and hereby are, vested in the Mayor and Aldermen, and Common Council of the said city, to be exercised by concurrent vote, each Board as hereby constituted, having a negative upon the other. More especially, they shall have power to make all such needful and salutary by-laws, as towns by the laws of this Commonwealth have power to make and establish, and to annex penalties, not exceeding twenty dollars, for the breach thereof, which by-laws shall take effect and be in force from and after the times therein respectively limited, without the sanction or confirmation of any court, or other authority whatsoever; *provided*, that such by-laws shall not be repugnant to the Constitution and laws of this Commonwealth: *And, provided, also*, that the same shall be liable to be annulled by the Legislature, thereof. . . .

SEC. 16. *Be it further enacted*, That the said City Council shall have power, and they are hereby authorized to provide for the appointment or election of all necessary officers, for the good government of said city, not otherwise provided for; to prescribe their duties, and fix their compensation, and to choose a Register of Deeds, whenever the city shall compose one county. The City Council, also, shall have the care and superintendence of the public buildings, and the care, custody, and management of all the property of the city, with power to lease or sell the same, (except the Common, and Faneuil Hall,) with power also, to purchase

property, real or personal, in the name, and for the use of the city, whenever its interest or convenience may, in their judgment, require it. . . .

SEC. 18. *Be it further enacted*, That the Mayor and Aldermen of said city, and the said Common Council, shall, as soon as conveniently may be, after their annual organization, meet together in convention, and elect some suitable and trustworthy person, to be the Treasurer of said city.

SEC. 19. *Be it further enacted*, That the citizens, at their respective ward meetings, to be held on the second Monday of April, annually, shall elect, by ballot, a number of persons, to be determined by the City Council, but not less than three in each ward, to be Firewards of said city, who together shall constitute the Board of Firewards for said city, and shall have all the powers, and be subject to all the duties, now by law appertaining to the Firewards of the Town of Boston, until the same shall be altered or qualified by the Legislature. And the said citizens shall, at the same time, and in like manner, elect one person in each ward, to be an Overseer of the Poor; and the persons thus chosen shall together constitute the Board of Overseers for said city, and shall have all the powers, and be subject to all the duties, now by law, appertaining to the Overseers of the Poor for the Town of Boston, until the same shall be altered or qualified by the Legislature. And the said citizens shall, at the same time, and in like manner, elect one person in each ward, to be a member of the School Committee, for the said city; and the persons so chosen, shall, jointly with the Mayor and Aldermen, constitute the School Committee for the said city, and have the care and superintendence of the public schools.

SEC. 20. *Be it further enacted*, That all Boards and Officers, acting under the authority of the said corporation, and entrusted with the expenditure of public money, shall be accountable therefor, to the City Council, in such manner as they may direct. And it shall be the duty of the City Council, to publish and distribute, annually, for the information of the citizens, a particular statement of the receipts and expenditures of all public monies, and a particular statement of all city property.

SEC. 21. *Be it further enacted*, That, in all cases in which appointments to office are directed to be made by the Mayor and Aldermen, the Mayor shall have the exclusive power of nomination; such nomination however, being subject to be confirmed or rejected, by the Board of Aldermen: *Provided, however*, that no person shall

be eligible to any office, the salary of which is payable out of the city treasury, who at the time of his appointment, shall be a member either of the Board of Aldermen or Common Council. . . .

SEC. 25. *Be it further enacted*, That general meetings of the citizens qualified to vote in city affairs, may from time to time, be held, to consult upon the common good, to give instructions to their Representatives, and to take all lawful measures to obtain a redress of any grievances, according to the right secured to the people by the constitution of this Commonwealth. And such meetings shall, and may be, duly warned by the Mayor and Aldermen, upon the requisition of fifty qualified voters of said city. . . .

SEC. 30. *Be it further enacted*, That nothing in this act contained, shall be so construed as to restrain or prevent the Legislature from amending or altering the same, whenever they shall deem it expedient.

SEC. 31. *Be it further enacted*, That this act shall be void, unless the inhabitants of the Town of Boston, at a legal town meeting, called for that purpose, shall, by a written vote, determine to adopt the same within twelve days.

15. Amendments to the New York Constitution of 1821.

The first of these amendments, ratified in 1833, gave the people of the city of New York power to elect their own mayor. The Constitution of 1821 had provided for the election of mayors by the city councils. The second, ratified in 1839, extended the right of electing the mayor to the people of other cities. Note should be taken of the word "annually" which appears in these amendments. These were the days when men still believed that "when annual elections cease, tyranny begins."

SOURCE—Francis N. Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* (Washington, 1909), V, 2652.

(Ratified 1833)

IV. At the end of the tenth section of the fourth article of the said constitution add the following words: "Except in the city of New York, in which city the mayor shall be chosen annually by the electors thereof qualified to vote for the other charter officers of the said city, and at the time of the election of such officers." . . .

(Ratified November, 1839)

VI. Mayors of the several cities in this State may be elected annually by the male inhabitants entitled to vote for members of the common councils of such cities respectively, in such manner as the legislature shall by law provide, and the legislature may, from time to time, make such provision by law for the election of any one or more such mayors; but until such provision be made by law, such mayors (excepting the mayor of the city of New York) shall be appointed in the manner now provided by the constitution of this State; and so much of the tenth section of article fourth of the constitution of this State as is inconsistent with this amendment is hereby abrogated. . . .

16. Extract from the Charter of Chicago, 1837.

Chicago received her first charter from the Illinois legislature in 1837. It is interesting to compare the form of government provided for the then small community at the lower end of Lake Michigan with colonial and other early forms of government for small cities. The Dongan charter was very much like that of a private corporation. The first Chicago charter was obviously a form of government for a small republic.

SOURCE—*Laws of the State of Illinois, 1836-1837* (Vandalia, 1837), 50-77.

AN ACT TO INCORPORATE THE CITY OF CHICAGO.

· · · ·
SEC. 3. The said City shall be divided into six wards, . . .

SEC. 4. There shall be in and for the said city, except as herein afterwards provided, one Mayor, twelve Aldermen, one clerk, one Treasurer, six assessors, one or more collectors, and such other officers as are hereinafter authorized to be appointed, which said Mayor, Aldermen and assessors, shall be free holders in the said city.

SEC. 5. An election shall be held in each of the wards of said city, on the first Tuesday in March in each year, after the year eighteen hundred and thirty-seven, . . .

SEC. 6. At the first election under this act, and at each annual election thereafter, there shall be elected two Aldermen and one

assessor from each ward, each of whom shall be an actual resident of the ward in which he was elected, *Provided however*, That the aforesaid wards, denominated the third and fifth wards, shall be entitled to elect but one Alderman for each ward, until the annual election for the year anno domini 1839. . . .

SEC. 13. The common council shall appoint as many police constables as they shall think proper, not exceeding one in each ward, who shall not have power to serve any civil process out of the limits of said city, except in cases of persons fleeing from said city, and to commit on execution where the defendant shall have been arrested in the said city.

SEC. 14. The Mayor for the said city, shall be chosen by the qualified electors of the said city, at the same time and in the same manner as is prescribed for the choosing of Aldermen, whose term of service shall be for one year, until his successor shall be chosen and qualified. At the time of voting for Aldermen, the electors of said city shall also vote in their respective wards, for some qualified person as Mayor of said city, which votes shall be canvassed and certified at the same time, and in the same manner as those given for Aldermen, and the person having the highest number of votes given in the several wards at such election shall be Mayor.

SEC. 15. The mayor and aldermen of the said city shall constitute the common council of said city. The common council shall meet at such times and places as they shall by resolution direct, or as the mayor, or in his absence any two of the aldermen, shall appoint. The mayor when present, shall preside at all meetings of the common council, and shall have only a casting vote. In his absence, any one of the aldermen, may be appointed to preside: a majority of the persons elected as aldermen, shall constitute a quorum. No member of the common council shall, during the period for which he was elected, be appointed to, or be competent to hold any office of which the emoluments are paid from the city treasury, or paid by fees directed to be paid by any act or ordinance of the common council, or be directly or indirectly interested in any contract, the expenses or consideration whereof are to be paid under any ordinance of the common council. But this section shall not be construed to prevent the mayor from receiving his salary or any other fees permitted by this act.

SEC. 16. The common council shall meet annually, after the year 1837, on the second Tuesday in March, and in 1837, on the

day following the election, and, by ballot, appoint a clerk, treasurer, city attorney, street commissioner, police constables, clerk of the market, one or more collectors, one or more city surveyors, one or more pound masters, porters, carriers, cartmen, packers, beadles, bellmen, sextons, common criers, scavengers, measurers, surveyors, weighers, sealers of weights and measures, and gaugers.—If for any cause the officers above named are not appointed on the second Tuesday of March, on the day after the election, in the year eighteen hundred and thirty-seven, the common council may adjourn from time to time until such appointments are made. . . .

17. The Charter of New York, 1849.

The extracts from this charter relate to the executive organization of the city. They are of importance as indicating the scope of municipal governments at that time and the method of their organization. It is notable that, with the exception of the Croton-Aqueduct Board, these departments are all presided over by single officers.

SOURCE—*Laws of the State of New York*, 1849 (Albany, 1849), Chap. 187:

§ 9. The executive power of the corporation shall be vested in the mayor, the heads of departments, and such other executive officers as shall be from time to time created by law, and neither the common council nor any committee or member thereof, shall perform any executive business whatever except such as is, as shall be especially imposed on them by the laws of the state, and except that the board of aldermen may approve or reject the nominations of the mayor as hereinafter provided.

§ 10. There shall continue to be an executive department which shall be known as the "police department," and the mayor of the city shall be the head thereof. There shall be a bureau in this department, and the chief officer thereof shall be denominated the chief of police.

§ 11. There shall be an executive department which shall be denominated the "department of finance," which shall have control of all the fiscal concerns of the corporation, and shall prescribe the forms of keeping and rendering all city accounts whatever, and all accounts rendered to or kept in the several departments of the city government, shall be subject to the inspection and revision of

the officers of this department. It shall settle and adjust all claims whatsoever by the corporation or against them, and all accounts whatever in which the corporation is concerned, either as debtor or creditor. The chief officer of this department shall be called "the comptroller of the city of New York." There shall be a bureau in this department for the collection of the revenue accruing from taxes. The chief officer thereof shall be called the "receiver of taxes," who shall nominate, and with the advice and consent of the board of aldermen, appoint so many clerks as shall be authorized by the common council: provided that nothing in this act contained, shall be held to interfere with the tenure of office of the present receiver of taxes and deputy receiver of taxes, as established by the act passed April 11, 1848. There shall be a bureau in this department for the collection of the revenue accruing from rents, and interest on bonds and mortgages, and for the performance of such other duties as may be directed by the common council, the chief officer of which shall be called the "collector of the city revenue." There shall be a bureau in this department for the reception of all moneys paid into the treasury of the city, and for the payment of moneys therefrom on the warrant drawn by the comptroller, and countersigned by the mayor and clerk of the common council, and the chief officer thereof shall be called the "chamberlain of the city of New-York."

§ 12. There shall be an executive department under the denomination of the "street department," which shall have cognizance of opening, regulating and paving streets; building and repairing wharves and piers; digging and building wells; and the construction of public roads when done by assessment; the filling up of sunken lots, under ordinances of the common council from the city inspectors department. It shall also have cognizance of collecting the assessments connected with such expenditures. The chief officer shall be called the "street commissioner."

There shall be a bureau in this department for the collection of assessments, and the chief officer thereof shall be called the "collector of assessments," and his assistants "deputy collectors."

There shall be a bureau in this department, the chief officer of which shall be called the "superintendent of wharves."

§ 13. There shall be an executive department to be denominated the "department of repairs and supplies," which shall have cognizance of all repairs and supplies of and for roads and avenues, public pavements, repairs to public buildings, to fire engines and

apparatus of the fire department; and the chief officer thereof shall be called the "commissioner of repairs and supplies."

There shall be four bureaux or branches in this department, and the chief officers shall be respectively, denominated the "superintendent of roads," "superintendent of repairs to public buildings," "superintendent of pavements," and "chief engineer of the fire department."

§ 14. There shall be an executive department to be denominated the "department of streets and lamps," which shall have cognizance of procuring the necessary supplies for, and of lighting the public streets and places, lighted at the expense of the corporation; and of cleaning the public streets, and collecting the revenue arising from the sale of manure, and also, of the transferring of butchers stalls in the public markets. The chief officer thereof shall be denominated the "commissioner of streets and lamps."

There shall be three bureaux in this department, and the chief officers thereof shall be called the "superintendent of lamps and gas," "superintendent of streets," and "superintendent of markets."

§ 15. There shall be an executive department, under the denomination of the Croton aqueduct board, which shall have charge of the Croton aqueduct, and all structures and works and property connected with the supply and distribution of water to the city of New-York and the underground drainage of the same, and of the public sewers of said city, and the collection of the revenues arising from the sale of the water, with such other powers and duties as shall or may be prescribed by law. The chief officers thereof shall be called the president, engineer and assistant commissioner, who together shall form the Croton aqueduct board, and hold their offices for five years.

There shall be a bureau in this department for the collection of the revenues derived from the sale of the water, and the chief officer thereof shall be called the "water register."

§ 16. There shall be an executive department under the denomination of the "city inspector's department," which shall have cognizance of all matters relative to the public health of said city, and the chief officer thereof shall be called the "city inspector."

§ 17. There shall be an executive department known as the "alms house department," which shall have cognizance of all matters relating to the alms house and prisons of said city; the chief officers thereof shall be called the "governors of the alms house."

They shall consist of the number, derive and hold their offices and be charged with the duties, powers and responsibilities as prescribed by the act entitled, "An act to provide for the government of the alms house and penitentiary in the city and county of New-York."

§ 18. There shall be an executive department known as the "law department," which shall have the charge of, and conduct all the law business of the corporation, and of the departments thereof, and all other law business in which the city shall be interested, when so ordered by the corporation; and shall have the charge of and conduct the legal proceedings necessary in opening, widening or altering streets; and draw the leases, deeds and other papers connected with the finance department; and the chief officer thereof shall be called the "counsel to the corporation."

There shall be a bureau in this department, the chief officer of which shall be denominated the "corporation attorney."

There shall be a bureau in this department the chief officer of which shall be called the "public administrator."

§ 19. It shall be lawful for the common council of said city to establish such other departments and bureaux as they may deem the public interest may require, and to assign to them, and those herein created, such duties as they may direct, not inconsistent with this act; but no expense shall be incurred by any of the departments or officers thereof, whether the object of expenditure shall have been ordered by the common council or not, unless an appropriation shall have been previously made concerning such expense; and no member of the common council head of department, chief of bureau, deputy thereof, or clerk therein, or other officer of the corporation, shall be directly or indirectly interested in any contract, work or business, or the sale of any article, the expense, price or consideration of which is paid from the city treasury, or by any assessment levied by any act or ordinance of the common council, nor in the purchase of any real estate, or other property belonging to the corporation, or which shall be sold for taxes or assessments.

§ 20. The heads of departments, except the Croton aqueduct board, shall be elected every three years by the people. In case of vacancy of any of said heads of departments by removal from office or otherwise, the mayor, by and with the advice and consent of the board of aldermen, shall appoint a person to fill the same, until the vacancy shall be filled by the electors at the next charter election. The heads of departments shall nominate and by and with the consent of the board of aldermen appoint the heads of

bureaux in their several departments, except the chamberlain of the city of New-York, the receiver of taxes and the chief engineer of the fire department. The heads of departments shall also in like manner appoint the clerks in their immediate offices. The heads of bureaux shall nominate and with the consent of the board of aldermen, appoint all clerks in their respective bureaux. The mayor shall nominate and by and with the consent of the board of aldermen, appoint the chamberlain of the city of New-York, the chief officers of the Croton aqueduct department and the receiver of taxes. The chief of the fire department shall be elected in the same manner as is now or may hereafter be prescribed by law. The number of officers and clerks in the several departments shall be prescribed by the common council. The terms of all charter officers not prescribed by law of the state shall be fixed by the common council.

All officers whose appointments are not otherwise provided for, shall be elected or appointed in such manner as the common council shall by law prescribe. Any officer of the city government, except the mayor and members of the common council, may be removed from office by concurrent resolution of both branches of the common council, provided, that no removal shall take place until the party sought to be removed has had an opportunity to be heard in his defense, and unless two-thirds of the whole number of both branches vote therefor; and provided, also, that the cause of such removal shall be entered at large upon the journals of both branches of the common council. Any head of department may remove any clerk in his department or any bureau thereof, with the consent of the mayor. . . .

18. The Charter of San Francisco, 1851.

This was the second charter of San Francisco. The first had been granted in 1850 and had given opportunity for an orgy of extravagance and corruption which this charter was intended to correct. It is important chiefly as showing the elaboration of governmental organization which by this time had become fashionable even for very small cities. Note should be made of the provision for a qualified veto of acts of the council by the mayor. This sort of provision had by 1850 become the rule.

SOURCE—*Statutes of California*, 1851 (Vallejo, 1851), Chap. 84.

AN ACT *to Reincorporate the City of San Francisco.*

The People of the State of California, represented in Senate and Assembly, do enact as follows:

CHARTER OF THE CITY OF SAN FRANCISCO.

ARTICLE I.

General Powers, Boundaries and Wards.

§ 3. The said city shall continue as now divided into eight wards, which number shall not be altered, unless by Act of Legislature. The Common Council shall, at least three months before the general election in the year eighteen hundred and fifty-two, and also during the second year thereafter, redistrict the city, so that each ward shall contain as near as may be the same number of inhabitants. . . .

ARTICLE II.

Of Elections.

§ 1. For the government of said city there shall be elected annually, by general ticket, the following officers: A Mayor, Recorder, Comptroller, Treasurer, Collector, Attorney, Marshal, Street Commissioner, and three Assessors; and, also, by the respective wards, a body of Aldermen and board of Assistant Aldermen.

ARTICLE III.

Of the Common Council.

§ 1. The legislative power of the city shall be vested in a Board of Aldermen and a Board of Assistant Aldermen, which shall each consist of one member from each ward, and shall form the Common Council of the city. No person shall be eligible to either Board who shall not be an elector of the ward for which he may be elected; nor shall he be a member except whilst a resident of the ward which he represents.

§ 2. Both Boards shall assemble on the first Monday after their election; they shall sit in separate chambers, and their proceedings shall be public. A majority in each Board shall be a

quorum, but a smaller number may adjourn from time to time, and may compel the attendance of absent members. Each Board shall elect a president from its own body, choose its clerk and other officers, determine the rules of its proceedings, judge of the qualifications of election of its own members, and keep a journal of its own proceedings, and shall have power to compel attendance of members, to punish them for disorderly conduct, and, with the consent of two thirds, to expel a member. Either Board may originate or amend any ordinance or resolution, and no ordinance or resolution shall be passed unless by a majority of all the members elected to each Board. On the final passage of every ordinance or resolution ayes and nays shall be taken and entered upon the journal.

§ 3. Every ordinance passed by both Boards, shall, before it takes effect, be presented to the Mayor for his approval. If he approve he shall sign it, if not he shall return it with his objections to the Board in which it originated. Said Board shall enter the objections on its journal, and publish them in some city newspaper. If at any stated meeting thereafter two thirds of all the members elected to each Board shall agree to pass said ordinance, notwithstanding the objections of the Mayor, it shall become a law. Should any ordinance not be returned by the Mayor within ten days after he shall have received it, it shall become a law, the same as if it had received his signature. . . .

§ 18. The Board of Assistant Aldermen shall have the sole power of impeachment, and all impeachments shall be tried by the Board of Aldermen. No person shall be convicted unless by the concurrence of two thirds of all the members. Judgment, in case of conviction, shall extend no further than removal from office and disqualification from holding any office under the charter; but the party convicted may be indicted and punished according to law.

ARTICLE IV.

Of Executive Officers.

§ 1. The executive power of the Corporation shall be vested in the Mayor and such other executive officers as are or may be created by law, and neither the Common Council nor any committee or member thereof shall perform any executive or ministerial business unless especially directed by law.

§ 2. It shall be the duty of the Mayor,

1st. To communicate to the Common Council semi-annually, and oftener if he shall think proper, a general statement of the situation and condition of the city in relation to its government, finances, and improvements, with such recommendations in relation thereto as he may deem expedient.

2d. To be vigilant and active in causing the laws and ordinances of the city to be duly executed and enforced; to be the head of Police; to exercise a constant supervision and control over the conduct of all subordinate officers, and to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and to certify the same to the Common Council; to countersign all licenses and warrants on the Treasury, and generally to perform all such duties as may be prescribed for him by law or by the city ordinances.

§ 3. Whenever there shall be a vacancy in the office of Mayor, or the Mayor shall be absent from the city, or be prevented from attending to the duties of his office, the President of the Board of Aldermen shall perform the duties, receive the compensation, and possess all the rights and powers of Mayor during such vacancy, absence, or disability.

§ 4. It shall be the duty of the Treasurer to receive and pay out all moneys belonging to the city, and to keep an account of all receipts and expenditures under such regulations as may be prescribed by ordinance. The Treasurer shall make monthly a full statement of the receipts and expenditures of the preceding month, and publish the same in some city newspaper.

§ 5. It shall be the duty of the Comptroller to report to the Common Council monthly a full and detailed statement of all the expenses and payments of the city government and the state of each appropriation made by ordinance, and he shall also, at the expiration of the fiscal year, publish a full and detailed statement of the receipts and expenditures of the city during said year, specifying the different sources of revenue and the amount received from each, the several appropriations made by the Common Council, the objects for which they were made, and the amount of money expended under each; the moneys borrowed on the credit of the city, the authority under which each loan was made and the terms on which it was obtained, the amount of the funded debt and of the interest accrued thereon; with a detailed statement of the sums owed and the property owned by the city.

§ 6. It shall be the duty of the Marshal to execute all process issued by the Recorder or directed to him by any legal authority; to attend upon the Recorder's Court; to arrest all persons guilty of a breach of the peace or violation of any ordinance, and take them before the Recorder; to supervise and control the city Police, to superintend the city prison, and to perform all such duties as may be prescribed by ordinance.

§ 7. It shall be the duty of the City Attorney to attend to all suits, matters, and things in which the city may be legally interested, to give his advice or opinion in writing whenever required by the Mayor or Common Council, and to perform all such other services in connexion with his profession as may be required by the Common Council.

§ 8. It shall be the duty of the Collector to issue all licenses that may be granted by city authority, and to register the same in a suitable book which shall at all times be open for public inspection; to collect all license taxes, and all taxes and assessments that may be due according to the assessment books, and to pay over the same to the Treasury in the specific funds received.

§ 9. It shall be the duty of the Assessors to prepare, within such time as the Common Council may direct, a correct list of all the taxable property within the city, with the true valuation thereof, and to present the same, certified by them, to the Common Council. The mode of making out said list and of ascertaining the value of property and of collecting all taxes, shall be the same as is or may be prescribed by law for assessing and collecting the State revenue. Should the owner of any property assessed as aforesaid not be satisfied with the valuation thereof, he may apply, under oath, to the Board of Assessors for the reduction of the assessment. If said Board refuse he may appeal to the Board of Aldermen, and their decision shall be final.

§ 10. The Recorder, as to offences committed within the city, shall have like jurisdiction as may be conferred upon Justices of the Peace. He shall also have final jurisdiction in all cases of assault, riot, breach of the peace, and petit larceny, and all crimes and misdemeanors punishable by fine not to exceed five hundred dollars, or imprisonment not to exceed three months, or both such fine and imprisonment.

§ 11. The Common Council shall prescribe the duties of all officers whose duties are not defined in this Act, or in any other law of this State, and it shall be the duty of the officers of the city

generally to perform all such services as may be required by law, or the ordinances of the Common Council. . . .

§ 14. The members of the Common Council shall receive no compensation for their services. . . .

§ 16. The officers elective under this charter shall continue in office for one year or until their successors are qualified; but any officer may be removed for mis-conduct by impeachment. . . .

19. Communication from the Citizens' Association of the City of New York Relating to Commissions in the Metropolitan District, 1867.

This communication was addressed to the president of the constitutional convention of 1867. It is an argument on behalf of the state-appointed commission. Incidentally, the communication presents a very striking picture of the state of municipal government in New York following the Civil War. This was but six years before the Tweed exposures, and corruption was at its height.

SOURCE—*Documents of the Convention of the State of New York, 1867-68* (Albany, 1868), V, No. 126.

COMMUNICATION FROM THE CITIZENS' ASSOCIATION OF THE CITY OF NEW YORK IN RELATION TO THE COMMISSIONS IN THE METROPOLITAN DISTRICT, 1867.

Citizens' Association of New York }
September 18, 1867. }

HON. WILLIAM A. WHEELER, *President of the N. Y. State Constitutional Convention*:

DEAR SIR—The Citizens' Association respectfully begs leave to address you, and through you the Convention, on the subject of making suitable provisions in the revised Constitution for the continuance and efficient operation of the Commissions established within the Metropolitan District, of which New York city forms the largest part. . . .

The idea of absolute local self-government in the city of New York, has no foundation in our past history, and is at war with the fundamental principles of State supremacy. The State of New

York never allows any portion of its territory, be it town, county or city, a local independence, but subjects all parts of its domain to the supreme authority of the State itself. When a charter is given to a village for the convenience of its inhabitants, the better preservation of order, the protection of private right, and the suppression of local evils, the State confers upon such village certain special powers, which may be recalled by the Legislature at will, and differ widely from irrevocable grants of property. In the exercise of such powers, the village officials, in effect, are merely deputed to perform a portion of the functions of the State government at that particular place. So, on a larger scale, the city of New York, from time to time, has received authority from the State for the purposes of local government, but always subject to the superior power of the State. The great amount of property and the large population of the city render it expedient, and even necessary, that the provisions for the local government here should be ample and comprehensive; but the fundamental principle of the subordination of the local government of a district to the general government of the whole State, is the same here as in the case of any mere village.

So far as New York is concerned, it will be found that it is entirely due to the existence of commissions that our city has not been despoiled and ruined. All that is purely local in the government of our city bears no comparison in value to that which emanates from State authority; while the corruption of the Legislature is caused mainly by the money taken from this city by popular branches of the municipal government.

To abolish the commissions would be to destroy all hope of our attaining good government. It is not the capitalist, the merchant, the banker, the honest laborer and the largest tax payers in this city who are opposed to commissions, but the professional politician—the place and power seeker, the trader in contracts and jobs.

Some few eminent, able, and honest men may question this form of government, but the great mass of our responsible citizens uphold it, and would be struck with terror were it abolished.

Nothing in our form of government requires that all offices should be filled by election. It is maintained by the ablest writers on this subject, that, to insure the integrity of our institutions and the efficient and economical management of public affairs the elections should be few and held to fill the highest offices only. The

system of electing every officer, no matter how merely executive his duties, by spreading the elective franchise over so many subjects, cheapens and weakens it, and lowers the standard of character and capacity in our officials; because by multiplying the number of officers to be voted for we render it impossible for the elector to give the attention required to the character and qualifications of the individuals soliciting his vote. . . .

If it be true that good government is more effectually attained by extending this imaginary responsibility caused by the frequent use of the ballot box, it follows that the best government will be realized by making every officer, clerk and policeman elective, which, although it may appear to be absolute responsibility to the people, would in fact put an end to good government.

As regards the general plan of the State Government, which alone embraces the power of the whole people, there is no reason why it should not be moulded in some measure after that of the National Union, giving to the Governor the power of appointing subject to confirmation by the Senate, all strictly executive or judicial officers. And no argument presents itself why this power to appoint should cease in the case of the chief executive officers of great cities.

The city of New York is the most important division of the whole State. The commercial, financial, social and moral relations existing between the people thereof and of other portions of the State are too intimate and well known to require special reference in this letter. Suffice it to say, that this city is in fact the heart not only of our State but of the whole nation. Art, science, education, religion, all have their great centres here, and therefore the people of our State cannot, without great danger to themselves, give over the entire government of this Metropolis to the hands of those irresponsible masses among us who control the ballot box.

Again, there are some officers which, by reason of their nature, should be independent of direct popular control; and especially is this the case in large cities, such as New York. Among such officers are those which have the control of the police, the public health, the protection of property, and the construction and maintenance of such public works or improvements which, although local in fact, are national in character and effect.

The people of the State have many interests in this city which it is their right and duty to protect.

It was in consequence of the danger caused by the bread riots,

to the millions of dollars' worth of breadstuff in this city owned by the farmers throughout the State, that the law was passed making counties liable for the destruction of property by rioters.

The association holds that it would be dangerous in the extreme to trust the above great interests to the mayor, who, while his office is elective, is so completely in the hands of those who control large masses of votes.

To give the mayor this power is to practically hand the matter over to the following elements of our population: A law exists prohibiting the sale of intoxicating liquors on Sundays, in the city of New York. Sunday was the most profitable day for the saloon and bar keepers. It was notorious that every Sunday, in every drinking shop, this law was openly violated. No prosecutions were instituted against the offenders, because they were influential in controlling the votes of their ward or district. They were the whippers-in of their party. Not only were the suffrages of the landlords and barkeepers thus obtained, but those of the thousands of unfortunate persons whose score was chalked up in the saloon, and cancelled by voting for the favorite candidate. There were ten thousand drinking shops in this city; if each furnished but two voters, here were twenty thousand votes controlled by the intentional neglect to enforce a simple law.

The keepers of junk shops can be controlled by granting licenses to them in the first instance; and, in the second, by refraining from revoking those licenses when stolen goods, bought from thieves, are found in their possession.

The keepers of second-hand clothes shops can be controlled in like manner.

So with the keepers of stands upon public streets, held "during the pleasure of the common council."

So with the storekeepers, who are permitted, on the like terms, to extend projecting signs, show-cases and advertising devices into the thoroughfares, and to incumber the sidewalks.

So with the keepers of stands in the markets.

So with the persons suffered to incumber the piers and wharves.

So with the keepers and frequenters of gambling houses, for the suppression of which strong laws are now in existence.

So with the keepers of brothels.

So with the keepers of dance-houses.

So with the keepers and patrons of concert saloons.

So with the keepers of lottery shops.

All of these can be controlled without the expenditure of a dollar. They yield an aggregate of many thousand votes.

The foreign vote in this city is 80,000; the native vote, 52,000.

By the police returns for 1866, it appears that there were 55,528 males arrested for crime during the year, of whom 45,000 were old enough to vote. In addition to the above we have several other classes that can be controlled in the same way, making altogether a phalanx of over 60,000 strong always marching solid to the ballot box.

. . . .

Those interests which require to be kept under strict police surveillance, act together in local politics, and exert an influence and power in the elections that cannot be withstood—*their wishes are paramount, and their judgments irrevocable.*

In fact, the nominations of the political parties in this city are almost exclusively controlled by the thousands of dram shops infesting every locality.

To give the mayor of the city of New York direct power over the police, the health and excise boards, the fire department and the Central Park, is to hand over these matters to the ultimate control of the classes who make and unmake the mayor according as he is their tool or not.

It is not safe to place the execution of the laws in the hands of the classes themselves against which they are to be enforced.

It is for this reason that many of the laws upon the statute book have become a dead letter. The burden of the complaints of the present mayor in his messages to the common council, and also of the city officials, is, that the greater portion of the money raised by tax is spent by what they call "irresponsible commissions." . . .

Again, the real point to be attained is efficient and economical government; the question of practical import *should not be who spends the money, but how is that money spent*; and what do the people obtain for it; and if it be found that the money under the control of the commissioners is judiciously, economically and honestly spent, then there is no cause of complaint against them; and if the disbursement of their money shows no such improper conduct as is manifested in the matters under the control of the Common Council and Board of Supervisors, then, in the commissioners we have attained the best form of government, practicable at present. . . .

To show with what economy the Common Council and the Board of Supervisors husband the money and other property under their control, we refer to the following instances:

THE COMMON COUNCIL

On the 14th day of June, 1866, a resolution was rushed through both branches, giving away, in fact, to the Harlem Railroad Company, the whole of One Hundred and Twenty-fifth street. It was pushed through with such indecent haste (passing both boards the same day), that Mayor Hoffman, in his veto, if not in form, yet in substance, strongly rebuked the Common Council for the extraordinary rapidity with which it was ready to sacrifice the best interests of our people. Of course no public notice was given, for those who had the management of the little affair wished to keep as quiet as possible.

A resolution passed the Common Council directing the Street Commissioner to make a contract for twenty years for lighting our streets with coal gas. Mayor Hoffman vetoed this scheme, but it was only effectually stopped by an injunction; had the Common Council been able to deliver our people, bound hand and foot, to the gas monopolies, we should have been saddled with the sum of ten millions of dollars per year for every poor light. . . .

BOARD OF SUPERVISORS.

The Board of Supervisors has of late abused its trust in the following instances, among many others:

What was paid for enrolling the militia of the city?

In 1864, on the plea of correcting the enrollment of this city, so as to reduce its quota under the national drafts or conscriptions, the Volunteering Committee of the Board of Supervisors set about making up a new list of persons liable to military duty.

When it was done peace was declared, and it was utterly useless; \$800,000 had been wrung from the tax payers and thrown to a horde of hungry office seekers.

But this was not all. The committee of the Board of Supervisors resolved that Mr. Blunt had so efficiently served the tax payers, that they must pay him something more. So they voted him a service of plate worth \$6,000, and they voted him a purse of \$50,000.

The service of plate was given him.

The \$50,000 was given him.

In December, 1865, the mayor sent the following veto to the Board of Supervisors:

"I return herewith, without my signature, a resolution of your Honorable Body, directing the Comptroller to draw his warrant in favor of the New York Printing Company for the sum of \$1,500, for printing five thousand copies of the 'New Election Law,' and for printing and delivering circulars to inspectors and canvassers.

"I am constrained to regard these charges as grossly exorbitant. Five thousand copies of the 'New Election Law' can be printed at a fair profit, and on as good paper, and in the same style as those furnished by the New York Printing Company, for less than \$250, leaving an extra gain of over three hundred per cent.

"The printing and delivery, by messengers, of the circulars alluded to, amount to \$500.

"These charges are equally excessive, especially as I have learned from the police authorities, that the circulars were not delivered by the messengers of the printing company, but through the agency of that department.

"Only two thousand copies of the 'New Election Law' were received at the police headquarters, and I have reason to believe that not more than half the number of copies charged in the bill were printed."

"C. GODFREY GUNTHER, *Mayor.*"

Notwithstanding this expose, the board took up the bill and passed it over the mayor's veto, without explanation, as appears from the following extract from the published proceedings:

"Supervisor Roche moved that the resolution, adopted November 28, 1865, and vetoed December 12, to pay the bill of the New York Printing Company for printing the Election Law, be taken up and considered; which was carried.

"The same was then adopted, notwithstanding the said objection, by the following vote:

"*Affirmative*—Supervisors Fox, Roche, Shook, Smith, Stewart, Tweed and Willmann—7.

"*Negative*—Supervisor Ely—1."

Therefore, under the provisions of the act, passed April 15, 1857, relative to the Board of Supervisors of the county of New York, the same became adopted.

The County Court House job, by which over \$3,000,000 have been squandered in this building, which does not yet approach completion. This scheme is too familiar to the public to need particular mention.

For armories and drill rooms in the first eight months of 1867, the Board of Supervisors spent over \$200,000, and this was spent chiefly for fitting up the armories with the most expensive carved and gilded black walnut furniture. . . .

In conclusion, the association would say that, in going back to the unlimited use of the ballot-box in the government of this city, we simply repeat an experiment tried for thirty years, which brought our city to the verge of ruin—it is no new device, but returning to a disastrous failure, and those who so earnestly advocate the unreserved use of the ballot-box must have forgotten the condition of things here from 1853 to 1859, which drove our people to the Legislature for relief.

Our police at that time consisted of an unorganized mass of indiscreet persons, if not worse, whose principal business was to take care of the interests of certain notorious politicians. The Fort Gansevoort and other gigantic jobs were put through with the greatest ease. New York to-day is a paradise contrasted with those days when ballot boxes were controlled and packed by the residents of some of the lower wards of the city, where live the helpless and the ignorant, so easily misled and so easily controlled; who, even at a glance or threat, became the mere tool of a crafty and successful politician, and would vote as required.

The advocates of the unrestricted use of the ballot box, must also have forgotten the fearful scenes enacted in the July riots of 1863, which cost the city millions of dollars. The thousands and tens of thousands that came forth from lanes, alleys, cellars and slums, and from dark holes and corners, not only still exist, but have largely increased their numbers. This city is the grand entrepot into which Europe annually pours her thousands of depraved and criminal classes; they are here to-day, the useful tools of worthless politicians, who stop at nothing that will secure power.

This association acknowledges facts, and proposes to deal with them as such.

Let there be an intermingling of the powers of the State and local governments, as there is of State and local interests. This association is laboring to establish a good government, that aims at,

1st. A thorough efficiency in all it undertakes.

2d. Economy of expenditure.

3d. The best method of accomplishing these results.

With this object in view, the association submitted to the Convention the basis of a plan for the government of New York city, in which were represented and blended the respective interests of the city and State. The association insists that, by destroying the commissions, the Convention will destroy the results of the accumulated experience of twenty years misrule; will overthrow the most economical, the most efficient, the best part of the government of this city; will inflict the greatest injury upon capital, commerce and labor, and will pave the way to anarchy. The withdrawal of the powers vested in the commissioners, with such a population as we have shown exists here, would render life and property so insecure, that speedy ruin would overtake our city.

The association trusts that what has been stated will meet with that consideration which the importance of the subject claims.

Respectfully submitted,

PETER COOPER,

Chairman Citizens' Association.

Rich. M. Henry, *Secretary.*

20. Charter of New York City, 1873.

This was a reform charter which took the place of the so-called Tweed charter of 1870. Judged by modern standards, however, the Tweed charter provided a better form of governmental organization than did this one. The charter of 1873 is peculiarly interesting as carrying to an extreme the board system of administration. The extracts which follow relate to the organization of the executive departments.

SOURCE—*Laws of the State of New York*, 1873 (Albany, 1873), Chap. 335.

§ 26. There shall be the following other departments in said city:

Finance department.

Law Department.

Police department.

Department of public works.

Department of public charities and correction.

Fire department.

Health department.

Department of public works.

Department of docks.

Department of taxes and assessments.

Department of buildings. . . .

§ 30. The head of the finance department shall be called the comptroller of the city of New York, and shall hold his office for four years, and until his successor shall be appointed, unless sooner removed as herein provided. . . .

§ 37. The head of the law department shall be called "counsel to the corporation." He shall hold his office for four years, and until his successor is appointed, unless sooner removed, as herein provided. . . .

§ 39. The police department shall have for its head a board to consist of five persons, to be known as police commissioners of the city of New York, who, except those first appointed, shall hold their offices for six years, unless sooner removed as herein provided; but those first appointed shall be appointed and hold office for one, two, three and five years respectively. . . .

§ 70. There shall be a department of public works, the head or chief officer of which shall be called "commissioner of public works," who shall hold office for four years, and until his successor is appointed, unless sooner removed, as herein provided. . . .

§ 74. The department of public charities and correction shall hereafter be composed of and have for its head a board of three persons, which board shall possess all the powers and discharge all the duties now conferred upon such department by special laws and by all the provisions of chapter five hundred and ten of the laws of eighteen hundred and sixty, and the acts and parts of acts amendatory thereof, except as the same are modified or repealed by the provisions of this act. The commissioners, except those first appointed, shall hold office for six years, unless sooner removed as herein provided. There shall be under said commissioners a bureau of charities and a bureau of correction. The bureau of charities shall have charge of all matters relating to persons not criminals. The bureau of correction shall have charge of all matters relating to criminals. . . .

§ 76. The fire department shall have for its head a board, to consist of three persons, to be known as fire commissioners of the

city of New York, who, except those first appointed, shall hold their offices for six years, unless sooner removed as herein provided. . . .

§ 80. The health department shall consist of the president of the board of police, the health officer of the port, and two officers to be called "commissioners of health," one of whom shall have been a practicing physician for not less than five years preceding his appointment. The commissioner of health, who is not a physician, shall be the president of the board, and shall be so designated in his appointment. These several officers shall together constitute a board, which shall be the head of the health department. The commissioners of health, except those first appointed, shall hold their offices for six years, unless sooner removed as herein provided. . . .

§ 84. [The department of public parks] . . . shall be under the charge of a board to consist of five members, who, except those first appointed, shall hold their offices for five years, unless sooner removed as herein provided. The persons first appointed shall be appointed and hold office for one, two, three, four and five years respectively, unless sooner removed as herein provided.

§ 85. There shall be a department called the department of buildings, which shall be under the control of an officer, who shall be known as the "commissioners of buildings." The commissioner shall appoint as the chief executive officer of the department a person who shall have been for at least ten years an architect or builder, and who shall be approved by the New York chapter of the American Institute of Architects. He shall be known as the "surveyor of buildings." The powers and duties of said department, its officers and employees and subordinates, and their qualifications, shall continue as now authorized by special laws (except as modified or repealed by this act) in relation to buildings in the city of New York. . . .

§ 87. The department of taxes and assessments shall have for its head a president, who shall be so designated in his appointment, and two commissioners, who together shall possess all the powers and perform all the duties now possessed and performed by the commissioners of taxes and assessments. Except that it shall require a majority of such commissioners to correct or reduce the assessed valuation of the personal property of any person, and that no tax on personal property shall be remitted, canceled or reduced, unless the applicant or party aggrieved shall satisfy the commissioners that he has been prevented by absence from the city or by illness

from making his complaint or application to them within the time allowed by the law for the correction of taxes. They may regulate and abolish the subordinate offices and bureaus, as shall seem most advantageous to the public service. They shall, except those first appointed, hold their offices for six years, unless sooner removed as herein provided.

§ 88. There shall be a department of docks, the head of which shall be a board consisting of three persons residing in the city of New York, who, except those first appointed, shall hold office for the term of six years, unless sooner removed as herein provided, and shall possess such powers and perform such duties as are now possessed by the existing department of docks, but said board shall not have the power to change the exterior line of piers and bulkheads in the city of New York as now established by law. . . .

21. Philadelphia Citizens' Municipal Reform Association, 1873.

In January, 1873, the Citizens' Municipal Reform Association of Philadelphia presented the memorial which follows to the Pennsylvania constitutional convention. The memorial is of value to the student of municipal government as indicating the methods then advocated by municipal reformers for the betterment of city government. At the same time, it throws light upon the way in which the check and balance type of city government had worked in Philadelphia.

SOURCE—*Debates of the Convention to amend the Constitution of Pennsylvania, 1872-73* (Harrisburg, 1873), I, 212-217.

MEMORIAL.

To the Constitutional Convention of Pennsylvania from the Citizens' Municipal Reform Association.

ROOMS EXECUTIVE COMMITTEE, }
711 Sansom st., Jan. 13, 1873. }

The undersigned, a committee appointed by the Citizens' Municipal Reform association of Philadelphia, respectfully beg leave to lay before you some suggestions of amendments to the Con-

stitution proposed by that body, and to ask for them your earnest consideration. They are designed to remove evils which we believe are universally felt and acknowledged, and if to your superior wisdom they may not appear sufficient, we look with confidence to your devising more effectual measures. . . .

I. LOCAL SELF-GOVERNMENT

It is admitted by all thoughtful men that the municipal government of Philadelphia is a failure. While exacting an amount of taxation of which the yearly growth threatens soon to be intolerable, the municipality appears unable to perform properly a single one of the functions for which the money of the citizens is nominally collected. Immense sums are yearly spent for paving, street cleaning, police, gas, water and education, with a slenderness of return, which argues either corruption or incompetency, or, possibly, both. Many citizens, wearied with the constant aggravation of resultless expenditure, are losing faith in the ability of the people to govern themselves, and are led to the conclusion that, in dense communities at least, republican institutions are worse than useless, and that some form of absolutism is requisite if we would escape from the rule of the incompetent and unprincipled men who seem to have found the secret of capturing the suffrages of the people.

We think that this conclusion is unwarranted, and that the true reason of our failure in municipal administration lies in the fact that the people of our large cities really do not govern themselves. They are governed by a body known as the State Legislature, itself irresponsible directly to municipalities, which delegates to them such powers as chance, caprice or corruption may dictate, revokes or modifies those powers at will, and interferes, in every way, with the concerns of great communities, about which only a small fraction of its members can have the least acquaintance or feel the slightest interest. The authority thus exercised, without responsibility to those affected by it, leads, inevitably, to the grossest corruption. All the arts known to the most venal of demagogues are used to secure seats in the Legislature, where power can be turned to profitable account, and good men yearly shrink with greater disgust from the contamination involved by membership in the supreme law-making power of the Commonwealth.

Entertaining these views, we respectfully submit, for your consideration, the following clauses, which have been framed for

the purpose of restoring to the municipalities of the Commonwealth the right of self-government, of which they have been so long deprived:

I. The Legislature shall pass general laws whereby a city may be established whenever a majority of the electors of any town or borough, voting at any annual election, shall vote in favor of the same being so established.

II. The Legislature shall pass no special laws creating any municipality, or regulating its form of government or the management of its internal affairs, unless such laws be specially asked for, for a definite object, by a majority of the legal voters of any municipality, voting at any general or special election. And every municipality shall have power to pass laws for its own regulation, not repugnant to the Constitution of the United States or of this Commonwealth.

II. ALDERMEN.

No greater blot upon our civilization exists than the administration of justice in petty cases as exercised in a great city such as Philadelphia. All the worst arts of the professional politician are exerted to secure the position of alderman for those who are unfitted for it by training, by habits and by character; and it is only because their victims are habitually the poor and friendless that their brutal and venal tyranny fails to attract general attention and to arouse the sternest popular indignation. The abolition of the system which gives rise to these abuses is so generally recognized as desirable that it has been formally recommended by the grand inquest of the city of Philadelphia in a recent presentment.

No greater boon could be conferred on the community than a system by which cheap and equal justice could be had by poor and rich alike. To secure this we urge you to adopt a plan by which the office of a magistrate of the lower jurisdiction should be made attractive to capable and upright men, who by good conduct could secure a permanent career, but who, at the same time, could be speedily removed for any neglect or malfeasance. To this end we suggest for your consideration the following amendment:

“The office of alderman shall be abolished in all cities, and in lieu thereof there shall be appointed, by the Governor, a magistrate for every — thousand inhabitants, who shall have the jurisdiction and powers as justices of the peace, heretofore exercised by aldermen, and no other functions or powers. Such magistrates shall be

learned in the law, not less than —— years of age, and shall receive an adequate compensation, to be determined and paid by the authorities of their respective cities, which compensation shall not be diminished during their continuance in office. All the fees of the office shall be payable into the treasury of their respective cities. They shall hold their office during good behavior, but shall be liable to be removed therefrom by the court of common pleas of their respective counties upon cause therefor being shown by any citizen; and any person aggrieved by the judgment of the court of common pleas in such cases may remove the same, by writ of error, into the Supreme Court for the proper district; which writ of error shall be heard and decided by the judges thereof at the term to which it is returnable.”

If in suggesting the appointment of these magistrates by the Governor we should be thought to deviate from the principles of local self-government above set forth, we would reply that a wise discretion would seem to require the isolation of judicial functions from the influence of political passions, and that the complexity of large municipalities brings so many candidates before the people that it becomes impossible for the average voter always to exercise a careful discrimination with respect to the multiplicity of names presented to him upon his ticket. . . .

III. THE GRAND JURY

In the purer and simpler life of the country districts, the institution of the grand jury doubtless accomplishes the good purposes for which it was founded in past ages. In a city of three-quarters of a million souls it is simply an anachronism, powerless for good yet powerful for evil. The grand inquest into the condition of public institutions is scarcely more than a form which passes unheeded. As a sieve for the criminal courts to protect them from the avalanche of trivial cases returned by ignorant, careless or corrupt aldermen, it is still of some service, but the substitution of stipendiary magistrates for aldermen would promptly supercede its usefulness in this regard. . . .

We would therefore respectfully urge upon your attention the propriety of adopting the following amendment:

“In all cities the grand jury is hereby abolished, and the Legislature shall provide by appropriate legislation for the preparation of bills of indictment to be tried by a jury.”

IV. BRIBERY.

Unless popular belief be wholly misled few crimes are more frequently committed and more rarely punished than the bribery of public officials. If this be so the waste and extravagance of public expenditure and the interference with private rights thereby engendered is the least of the evils which it causes. Far more serious is the destruction of public confidence in municipal and State administration, and the debasement of public morality caused by the conviction that so grave an offence enjoys practical immunity. . . .

For these reasons we venture to submit the following amendment:

“In addition to the penalties now or hereafter to be provided by law for the punishment of bribery, the party or parties convicted shall be forever disfranchised and disqualified from holding any office of trust, honor or profit in this Commonwealth; and no one shall be liable to prosecution by reason of any testimony which he may have given showing his complicity therein.”

V. ELECTION FRAUDS.

We cannot conclude without expressing a hope that your wisdom may devise some plan by which the rapid development of fraud in elections may be checked. It is not too much to say that in Philadelphia, under the existing registry law, the perpetration of these frauds has been reduced to a science, and systematized to that degree that the confidence of the people in the result of an appeal to the ballot box is being undermined with dangerous rapidity. As the foundation upon which all our institutions rest, this confidence is so sacred a thing that it should be guarded and fostered with the most jealous care. Nothing can re-place it as a preservative element. The acquiescence of a defeated party in the result of an election is the most decisive proof of our capacity for self-government, and the most precious result of centuries of training in constitutional liberty; but that acquiescence can no longer be expected when fraud is openly practiced and audaciously boasted of, and a real majority finds itself helpless to assert its rights through the forms of law. When that time comes, and redress seems hopeless, the end will not be far off, and it is the part of wise statesmanship to calmly consider all possible contingencies

and to devise whatever measures may be best adapted to avert them. We do not presume to offer suggestions. The subject is one requiring for its comprehensive treatment throughout the Commonwealth a knowledge of details as to other localities which we do not possess. We can only say that it seems to us the remedy lies in the direction of limiting, as far as practicable, the size of election divisions, and giving the fullest opportunities for scrutinizing votes as they are polled.

VI. THE FEE SYSTEM.

The Municipal Reform association has been too earnest in its efforts to abolish within our city the corrupting influence of the fee system for us to hesitate in asking your attention to the propositions which have been laid before you with that object. Like the regulation of elections, it concerns too nearly the citizens of other localities for us to venture to obtrude upon you any general measure for that purpose. Our association last winter prepared a carefully matured bill on the subject, adapted to the necessities of Philadelphia, and the relief which the community failed to obtain from their representatives they now confidently expect at your hands. No one not familiar with the inner workings of our municipal machinery can form an adequate idea of the amount and the character of the wrongs which are perpetrated under the color of fees, or of the deplorably debasing influence which they exercise over public morality. There is, perhaps, no more potent stimulus at work in the rapid deterioration of our whole political life, and few more energetic agencies of reform could be devised than their removal.

In the confident hope that your deliberations will lead to the regeneration of our institutions, we have the honor to remain,

Your obedient servants,

HENRY C. LEA,
R. RUNDLE SMITH,
WILLIAM H. RAWLE,
Committee.

PART III

THE GROWTH OF THE POWER OF THE MAYOR

22. Charter of the City of New York, 1870.

This very brief extract from the so-called Tweed charter of 1870 refers entirely to the power of appointment and removal. This is the first charter of any important city, since the Philadelphia charter amendments of 1799, giving the mayor an absolute power of appointment. In this respect the charter of 1870 was ahead of its time. It remained in force only three years, the public mind revolting from its good and bad provisions alike when the exposure of Tweed and his colleagues occurred. Note should be made of the power of removal as it appears in this charter. The mayor was to impeach and the court of Common Pleas was to try the charges.

SOURCE—*Laws of the State of New York*, 1870 (Albany, 1870), I, Chap. 137.

§ 29. All the heads of departments hereinafter mentioned, except of the departments of finance and law,¹ shall be appointed by the mayor, as hereinafter provided. Any provision of law giving to the Governor power to remove any officer of the city government referred to in this act is hereby repealed. The common council shall have the power of impeachment of the mayor by resolution of two-thirds of all the members elected in each board. The mayor shall have the power of impeaching all heads of departments. In case the mayor shall be impeached, his assent to the resolution shall not be requisite. The court for the trial of impeachments shall be the full court of common pleas of the city and county of New York. It shall be the duty of the said court to define, by rule, the mode of impeachment and trial of charges.

¹ The heads of the departments of finance and law are to be elected for a term of four years.

If the court decide that the charges are sustained, the office of the impeached officer shall become vacant. . . .

23. Charter of the City of New York, 1873.

This charter, which replaced that of 1870, gave the mayor power to appoint heads of departments, subject to confirmation by the Board of Aldermen. The administrative organization provided for by this charter has already been described.¹ In view of the fact that most of the departments were managed by boards appointed for overlapping terms, much longer than that of the mayor (which was two years), the mayor's power actually to control the administration was not great. His power of removal was subject to approval by the governor of the state.

SOURCE—*Laws of the State of New York*, 1873 (Albany, 1873), Chap. 336.

§ 25. The mayor shall nominate, and, by and with the consent of the board of aldermen, appoint the heads of departments and all commissioners (save commissioners of public instruction, and also save and except the following named commissioners and officers who held office as such on the first day of January, in the year one thousand eight hundred and seventy-three, that is to say, the comptroller, the commissioner of public works, the counsel to the corporation, the president of the department of public parks, and the president of the department of police, which said comptroller, commissioners and counsel to the corporation shall hold their respective offices, as such comptroller, commissioners and counsel to the corporation aforesaid, until the expiration of their respective terms of office for which they were appointed, unless removed for cause as herein provided), and the said mayor shall in like manner appoint all members of any board or commission authorized to superintend the erection or repair of any building belonging to or to be paid for by the city, whether named in any law or appointed by any local authority, and also members of any other local board and all other officers not elected by the people, including the commissioner of jurors, whose appointment is not in this act excepted or otherwise provided for. Every head of department and person

¹ See p. 122.

in this section named, except as herein otherwise provided, shall hold his office for the term of six years, and in each case until a person is duly appointed in his place. The terms of office of all such heads of departments and persons other than those first appointed shall commence on the first day of May, but the heads of departments, consisting of boards of commissioners first appointed after the passage of this act, shall, except as herein otherwise expressly provided, be appointed for two, four and six years respectively, and except that the commissioners of police first appointed as aforesaid shall hold their offices for one, two, three and five years respectively. The persons first appointed shall take office on the expiration of the terms of office of the present incumbents, as hereinafter provided, and shall hold their offices until the first day of May in the year in which it is herein provided that their respective terms shall expire. All nominations to any office or offices which, by this act, the mayor is authorized or empowered to nominate a person or persons to in place of any present incumbent or incumbents, shall be made to the board of aldermen within twenty days after the passage of this act, and any such nomination or nominations to fill any vacancy which shall hereafter occur by reason of the expiration of the term of office of any officer, or from any other cause, and which shall not be created by any thing in this act, providing for the termination of the term of office of any officer or person now in office, shall be made to the board of aldermen, within ten days from the day of the date of any such vacancy; and any person who shall be appointed to fill any such vacancy shall hold his office for the unexpired term of his predecessor. The mayor may be removed from office by the governor in the same manner as sheriffs, except that the governor may direct the inquiry provided by law to be conducted by the attorney-general; and after charges have been received by the governor he may, pending the investigation, suspend the mayor for a period not exceeding thirty days. The heads of all departments, including those retained as above, and all other persons whose appointment is in this section provided for, may be removed by the mayor for cause, and after opportunity to be heard, subject, however, before such removal shall take effect, to the approval of the governor, expressed in writing. The mayor shall, in all cases, communicate to the governor, in writing, his reasons for such removal. Whenever a removal is so effected, the mayor shall, upon the demand of the officer removed, make, in writing, a public statement

of the reasons therefor. No officer so removed shall be again appointed to the same office during the same term of office. . . .

24. Pennsylvania Constitutional Convention, 1873.

The remarks of Mr. Cuyler, which are printed below, contain an interesting description of the state of municipal government at this time and are also interesting because of his suggestion that responsibility for the government of the city be given to the mayor.

SOURCE—*Debates of the Convention to amend the Constitution of Pennsylvania, 1872-73* (Harrisburg, 1873), II, 395-396.

The Clerk then read the third section, as follows:

SECTION 3. The mayor shall have a qualified veto on all the acts and ordinances passed by the council, shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal.

MR. LITTLETON. Mr. Chairman: I move to amend, by adding after the word "shall," in the second line, "appoint all heads of departments not elected by the people, and shall," so that it shall read, "shall appoint all heads of departments not elected by the people, and shall see that the duties of the several officers are faithfully performed," &c. . . .

MR. CUYLER. . . . I have had large experience in the municipal affairs of the city of Philadelphia, extending over a period of nine years' membership in its select council, and three years as its presiding officer, and I must say, with the experience I have had, I think the suggestion of the gentleman, who is now president of the select council, is full of wisdom. The mayor of the city of Philadelphia to-day is practically powerless. He sees constantly abuses—and growing abuses—and yet he is powerless to remedy them. The reason is that he has no control over the selection or removal of the heads of departments of the city government. They are selected by a joint convention of the select and common councils of the city, purely through political motives and political considerations. They are selected purely for party services rendered in the past, and for those which they may be capable of rendering in the future, and the consequence is, as a practical result, that while our streets are wretchedly paved, while our highways are

unclean and filthy, and while many of the departments of the city government are as slipshod as they can possibly be, our mayor, though a gentleman of the highest virtue and largest intelligence, is simply powerless to apply any remedy. It is high time that we should have some redress for this condition of affairs, and I know of no method by which that redress can be obtained except by making the head of the department feel that he is responsible to the mayor of the city, and the mayor of the city responsible to the people of the city for the manner in which his duties are discharged. It may be that some little detail in the amendment of the gentleman from this city (Mr. Littleton) may be desirable. It may be that these heads of departments should receive the confirming vote of the majority of the select council of the city, or something of that kind; but that the mayor of the city of Philadelphia should be held responsible to the citizens for the manner in which the city is governed, and that power should be placed in his hands commensurate with that responsibility, I think is a crying necessity. I am amazed my friend Mr. Wetherill should doubt that it exists. He, too, has had large experience in the municipal affairs of this city, and I am sure his own reflection will confirm what I say, that the mayor is powerless to redress the wrong which he sees constantly before his eyes. I am in favor of a system that shall clothe the chief executive of the city with the largest power and responsibility—a power commensurate with his responsibility and a responsibility commensurate with his power. I do not believe in any other system of efficient administration. I cannot conceive it possible that the city could be wisely governed or its citizens could enjoy, as is their right, the blessings of good police, pure air, and water and light, and clean highways, except there be placed in the hands of the chief magistrate of the city power equal to the responsibility which rests upon him. . . .

25. Boston Charter Commission, 1875.

The report of this commission, from which a brief extract is printed below, is significant because of its criticism of gratuitous, non-professional administration and its suggestion that the mayor be given full power of appointment, subject to confirmation.

SOURCE—*Report of the Commission to revise the City Charter, Boston City Documents, 1875* (Boston, 1875), Document No. 3, iii-vii.

. . . Originally, the simple form of a town government, established according to the well-known usage of New England, was found adequate to a due performance of all municipal duties. The people in their primary assembly, the town meeting, were able to exercise an immediate control over their own prudential affairs, and by their votes to direct the expenditure of all moneys raised by taxation for municipal objects. But in the progress of time, as the number of inhabitants increased and the public exigencies multiplied, the need of a more vigilant and constant oversight of public affairs became apparent. It was found that a town meeting was too large a body of men for due consultation and deliberation. A prudent and economical administration of public concerns required more time and attention than could be efficiently and intelligently given in an assembly of all the voters of the town. The citizens of a busy and prosperous community, engrossed with their own personal concerns, having no direct interest in public affairs, and charged with no special duty with reference to them, would not give to the town the services which were essential to good order and the general welfare. Considerations of this nature rendered necessary the adoption of a form of local government for large towns, such as was contemplated in the 2d article of amendment to the Constitution of Massachusetts, by which the Legislature was authorized to grant city charters to towns containing more than twelve thousand inhabitants. The first charter of the city of Boston was granted immediately after the adoption of this amendment in 1822. The leading feature of it was to enable the inhabitants of the town to delegate to a mayor and to small and select bodies of men, called the City Council, the chief corporate powers and duties, which the town had previously exercised in town meetings, and had caused to be carried into effect through their selectmen and other town officers. The charter thus granted was wisely framed and judiciously adapted to the state of the municipal affairs of the town and the condition of its inhabitants at the time of its enactment. The usages of the town, the mode of conducting elections and managing the public business, were preserved in the first charter, as far as was consistent with the main object of securing a government designed to be carried on chiefly by representatives of the people instead of by the people themselves. But the lapse of half a century since the adoption of the first charter has wrought great changes in the city and in its municipal affairs.

Its population in 1822 was only a little more than forty thousand. It now contains upward of three hundred and forty thousand. Its territory at that time embraced an area of about two thousand acres; now it includes more than twenty-one thousand five hundred acres. Its valuation in 1822 amounted only to about forty-two millions; in 1874 it rose to upward of eight hundred millions. The change has not been merely in the extent of its territory, the number of its inhabitants and the amount of its taxable property. The character of its population has greatly changed. Instead of a small, compact community, the leading citizens of which were well known to each other, it has become a large metropolis, with a population spread over a large extent of territory divided into numerous villages, widely separated, having but few interests in common and the inhabitants of which are but little known to each other. With these changes have come their natural consequences. Many institutions, public works and organizations have grown up or been established, such as the public exigencies require, and which have added largely to the duties of the public officers of the city, essentially changed their character and rendered their administration more difficult and complicated. Among these may be named the introduction and supply of water; the maintenance of a large police force; the care and preservation of the public health, the efficient management of a fire department; the great increase of public ways and streets to be laid out, widened and kept in repair; the multiplication of public schools, and the establishment of hospitals and libraries. This enumeration comprises only a portion of the duties now required of the servants of the city. All of them need constant care and supervision, in order that efficient and faithful service may be maintained in all departments, and that due economy may be exercised in the expenditures of the large amounts of money necessary to their support.

It would seem to be clear that duties so numerous and important cannot be properly superintended and managed by persons who render gratuitous services only, or who are chosen to office, not for their experience in the duties which they may be called upon to perform, or their peculiar fitness and skill in the work of the different departments, which they may have in charge. The city is a great corporation, upon which is devolved not an abstract duty only of providing for the public welfare, but the practical work of the city, in administering its various departments and executing

the public works comitted to its care. No prudent individual or well-conducted business corporation would trust the management of important affairs to the care of inexperienced, incompetent or inadequately paid agents. No good reason can be given for the adoption of a different policy by the city. The great object in providing for the performance of official services in behalf of the city should be to so regulate it, that its servants should, as far as practicable, be trained by experience and practice, and be made subject to proper control.

In the draft of the charter herewith submitted the terms of office of the Mayor, and of the members of the City Council, have been extended to three years. This will prevent the frequent changes consequent on shorter terms, and will tend to give to the city the benefit of a greater knowledge and experience by those to whom the management of municipal affairs is to be intrusted.

To the City Council is given the entire control over all appropriations of public money, and the purposes for which it is to be expended. This is in conformity to the provisions of the old charter, and to the uniform practice of giving to the immediate representatives of the people the power to determine upon the use to be made of all moneys raised for municipal purposes.

In order to secure the services of capable and efficient men, to be placed in charge of the various departments of the city, it has been deemed expedient to provide that they should be selected and nominated by the Mayor and confirmed by the City Council. By this method of appointment, the responsibility of selection in the first instance is placed on the first officer of the city, whose duty it will be to examine into the qualifications of candidates for the places to be filled, before submitting nominations to the City Council. They will then be subjected to scrutiny and inquiry by the members of the Council, who will be able to ascertain whether the appointment is in all respects suitable. In this way it is believed that faithful and competent public officers will be more surely obtained than by a different mode of appointment. Personal and local influences will be less likely to prevail, where the sole responsibility of a nomination is placed on a single person, the Mayor of the city, and a confirmation by the City Council is required. This guards against the danger arising, on the one hand, from giving the sole power of appointment to a single person, and, on the other, from reposing the power entirely in a popular body. . . .

26. Amendment to the Charter of the City of Brooklyn, 1880.

This amendment proved to be a crucial one in the history of American city government. It gave the mayor an absolute power of appointment during the first thirty days after the expiration of the term of any head of a department. His power of removal, however, was limited by the necessity of sustaining charges before the supreme court.¹ It happened that the first mayor of Brooklyn under this revised charter was Seth Low, afterward mayor of Greater New York. His administration in Brooklyn was a splendid success. A chapter by him, entitled "American View of Municipal Government in the United States," will be found in Bryce's *American Commonwealth*.

Altogether, Brooklyn's experiment gained a great deal of enviable publicity and naturally led to imitation.

SOURCE—*Laws of the State of New York*, 1880 (Albany, 1880), I, 559-560.

...
§ 6. After the first day of January, eighteen hundred and eighty-two, the mayor of the city of Brooklyn shall have sole and exclusive power to appoint the successor of any commissioner or other head of department (except the department of finance and the department of audit), or of any assessor or member of the board of education of said city, when the terms of such officers shall respectively expire or as by law may then or thereafter be required to be appointed, and the term of office of such appointees and their successors, except assessors whose term shall be for four years, shall be for two years; provided, however, that if the mayor shall refuse or neglect for a period of thirty days after the expiration of the term of any officer, to make an appointment to office authorized to be made pursuant to this section, then and in that case such refusal or neglect shall be adjudged and deemed to be in all respects equivalent to and taken as an express appointment of the commissioner or other officer who may at the time be holding such office.

¹The supreme court in New York is not an appellate court, but is the principal trial court.

§ 7. The officer or officers at the head of any department may appoint and remove his or their clerks and assistants and other subordinates, and fix their salaries; provided, however, that on and after the expiration of thirty days from the time when a new officer or officers shall have been appointed as such head of department, he or they may remove clerks or assistants only upon filing in writing the reasons for any removal with the city clerk, which reasons shall not be questioned in any other place, except that foremen, inspectors and laborers temporarily employed under the department of city works may be removed at any time at the pleasure of the head of such department. No person employed on the police force or on the force for extinguishing fires shall be removed without cause, and then only after a public trial by the head of his department, and after having been found guilty of misconduct or neglect of duty, or having been adjudged incapable of performing his duty; the evidence on such trial shall be taken in full, and kept as a public record.

§ 8. Any officer who by the express terms of this act shall be deprived of his office shall be entitled to receive his salary in the same manner as if this act had not been passed, up to the expiration of his present term of office, but if such officer shall accept any other office he shall receive no additional compensation unless the salary attached to such other office shall be larger than that of the office which he shall hold at the time of the passage of this act, in which case he shall receive the salary only which is affixed to such other office. The mayor may suspend any officer appointed under the provisions of this act, provided he shall forthwith serve in writing upon the person suspended the charges and specifications upon which such suspension has been made, and on a notice of not less than five nor more than ten days, served upon the mayor by the person so suspended. The special term of the supreme court shall forthwith hear the proofs and arguments on such charges and specifications, and determine thereon if such suspended officers should be removed, and the judgment of such special term that such officer be removed, affirmed by the general term of the supreme court, shall remove the person so suspended from office from the date of his suspension; but if the judgment of the special term, or of the general term of the supreme court, shall be against such removal, such suspension shall thereupon cease; provided that the mayor may appeal from a judgment of the special term favorable to the accused to the general term, and the general term may

reverse the judgment of the special term, and find judgment of removal against the accused officer, if in its judgment justice so requires. The mayor may, if the interests of the city require it, make a temporary appointment during such suspension. . . .

27. The Boston Charter Commission of 1884.

The Boston Charter Commission of 1884 made a very thorough study of city government in Boston and other cities. A lengthy extract from its report follows. It emphasizes the desirability of home rule of municipal affairs, an absolute power of the mayor to appoint heads of departments, and the creation of a separate Board of Finance, elected by tax- and rent-payers, to have control of appropriations. This extract is also significant because it gives a detailed statement of the officers elected or appointed by various authorities in Boston at this time.

SOURCE—*Report of the Commission on the City Charter, Boston City Documents, 1884* (Boston, 1885), III, Document 120.

The Commissioners appointed under an order of the City Council, approved June 24, 1884, to "examine the act incorporating the City of Boston, and all other general and special statutes now in force concerning the government of the city, and report to the City Council on or before the first Thursday of November next what, if any, changes are necessary or expedient, by reason of the increase in area and population of the city," respectfully submit the following:—

The Commission organized, on the 16th of July, by electing Samuel C. Cobb chairman and William H. Lee secretary. As the time within which the report was to be made was limited the Commissioners decided to enter upon their work immediately; and notice was accordingly given of a public hearing at the Council Chamber on the 23d of July. The statements made at that hearing, and also at adjourned hearings on the 29th of July and 10th of September, are printed in full in the Appendix, together with a number of papers from gentlemen interested in the subject.

If any evidence were needed to prove the necessity for a change of the present loose and irresponsible methods of administering our local affairs, it would be found in these statements and communications; but unfortunately the evils of the present system

are so conspicuous and grievous that the Commission may well take note of them without formal proof. The lack of harmony between the different departments, the frequent and notorious charges of inefficiency and corruption made by members of the government against each other, and the alarming increase in the burden of taxation, are matters within the knowledge of all who have taxes to pay or who read the proceedings of the City Council.

The remedies suggested are many, and widely at variance. But it will be noticed that there is a substantial agreement upon the following points, namely, that the executive should be separated from the legislative department; that the power and responsibility of the executive should be increased; that the number of departments, and especially the number of heads of departments, should be reduced; and that the work of the different departments should be so arranged as to secure concert of action.

SUGGESTIONS FOR MUNICIPAL REFORM.

It may be well in this connection to refer briefly to the suggestions for municipal reform made by those who have given the subject special attention, and whose views are to some extent representative.

A Commission appointed by Governor Tilden to devise a plan for the government of cities in New York, submitted a report, in 1877, which contained the following recommendations:—

First. The delegation of the entire business of local administration to the people of the cities, free from legislative interference therewith; reserving to the State its functions of making the general laws under which the local affairs are to be administered, and also a supervision of the manner of administration.

Second. A chief executive officer, clothed with the authority of general supervision, and with the unfettered power to appoint the other principal executive officers, except those two (the chief financial and chief law officers) whose duties immediately affect the matter of the public expenditures, and with the power of removal, subject however to the approval of the governor.

Third. A Board of Aldermen clothed with all the legislative powers except such as relate to taxation and expenditure, and elected by the people.

Fourth. A separate body, called the Board of Finance, to be elected by the tax and rent payers, with such powers only as relate

to taxation, expenditure and debt; its principal functions being to determine the amount of the annual expenditure and to appropriate it to its various objects and purposes. The assent of this body is made requisite to the appointments of the chief financial and law officers.

Fifth. A detailed plan, designed to be complete in itself, for securing efficiency, order and frugality in the financial administration, and to be executed by the Board of Finance.

Sixth. A further enforcement of the maxim "pay as you go," by a prohibition against borrowing money or incurring debt, except under certain specified conditions not likely to arise often.

A Commission appointed by Governor Hartranft, of Pennsylvania, to devise plans for the government of cities in that State, submitted a report, in 1877, in which the problem of local government is discussed with great ability and fairness. They found that the principal weakness of the existing system was a want of power and responsibility on the part of the executive. "We have been impressed," they say, "with the conviction that the position and power of the mayor have not been such as should properly appertain to the office of the chief magistrate of the city government. He has no practical supervision or control over, or responsibility for, the conduct of other officers or departments of the government. He is powerless to restrain corrupt practices, however earnest he may be in his efforts to that end. It is self-evident that the affairs of government cannot be well conducted unless there is an executive head upon whom responsibility therefor is imposed. It is equally clear that such responsibility cannot be exacted without the grant of corresponding power."

The bill which the Commission submitted made the mayor the real head of the city. "He is to see that the ordinances and laws governing the city are enforced,—that subordinate officers do their duty,—that contracts are properly executed,—that city funds are not wasted. He is to be responsible for the good order and efficient government of the city. His powers of appointment and of suspension and removal; his power of examining accounts of officers, of suspending contracts, of participating in the deliberations of boards; his general supervision over all departments, are but the necessary means whereby he will be enabled to perform the responsible duties devolved upon him. With them he can secure good government; without them he would be helpless, and would only subject himself to defiance and derision if he attempted to interfere

with other officers, however bad their conduct might be. At the same time the bill provides for such restraints upon his action that he is not without proper accountability. His appointments and removals are subject to the approval of the Select Council, except in the case of the city treasurer, whose appointment must be confirmed by both branches."

The Commission proposed to invest the legislative branch with all the powers necessary for the purposes of municipal government, but to throw such restrictions around the exercise of those powers as to prevent any invasion of the executive department. The power of raising and appropriating the public money was vested in the City Council; and it was provided that all legislation should be by ordinance. . . .

In the city of Brooklyn, N. Y., the sole power of appointing the heads of departments was, by an act passed four years ago, vested in the mayor. The same power was given to the mayor of New York by an act passed last winter; but it does not take effect until the beginning of next year. It appears, therefore, that Brooklyn is the only city in this country where the plan has been tried; and there it has been in operation for so short a time that it must still be regarded as an experiment. If the people were always sure of securing for the chief executive a man of such admirable qualifications as the present mayor of Brooklyn, the plan might be commended as one from which the best results could be obtained. But how would this great power have been exercised had the opponents of the present administration in that city triumphed in the last election? After a trial which had greatly improved the city service, and had reduced the burden of taxation, there was less than two percent. difference in the votes cast at the election last fall for the two candidates for the mayoralty. It can hardly be doubted that, if the opposition to the present mayor had succeeded, the power which the State Legislature has conferred upon the office would have been used for party purposes with tremendous effect. There are many instances in the history of our own and of every other government where the chief executive for the time being has defied public sentiment; and, by the adroit use of the patronage which pertained to his office, has held power long after losing the respect and confidence of the people.

In the report of the New York Commission from which we have already quoted it is stated that "to bestow upon the mayor the absolute power of appointment and removal of all the principal

executive officers would, in the great cities, render him an autocrat. Responsibility for maladministration would, it is true, be easily fastened upon him; but to apply the remedy of deposition from power at an election would be a difficult task. To put into the hands of a single man the control of twenty millions of dollars, with liberty to use it to keep himself in place, would be suicidal. On the other hand, to require the concurrence of the aldermen in appointments, is to divide and destroy the responsibility."

A solution of the difficulty, not entirely satisfactory, apparently, to the Commission, was found in giving the mayor the sole power of appointment, except in the case of the chief financial and chief law officers, and checking his power of removal by requiring for that act the approval of the governor.

That it would not be expedient to give the sole power of appointment to the mayor, and that it would be equally unwise to place the confirming power in the legislative department, are propositions which rest on sound principles; but experience has shown that the difficulty is not to be met by placing the mayor under the control of the chief executive of the State.

Widely as the writers on this subject differ on other points they are substantially agreed in this, that the business of municipal corporations should be conducted on business principles; and, to that end, that the powers of the executive and legislative departments of the government should be separated and clearly defined. It will be seen by referring to the abstract of the charters given in the appendix that nearly all the large cities in this country have restricted the councils to legislative duties, and have given the mayor the initiative in the appointment of heads of departments. Experience has shown conclusively that this readjustment of power has been attended with satisfactory results. We say readjustment, because formerly the cities were all organized on substantially the same plan,—the original of which was the government established in London six centuries ago. In all of them the councils which made the appropriations and levied the taxes managed the executive departments through its unpaid committees; and the individual members had the spending of the money which the whole body voted. When a city reached a point in its growth where the homogeneous character of its population was lost, and the amount of the expenditures made it a prize for political competition, this loose and irresponsible system was sure to lead to inefficiency and corruption.

It is too much, perhaps, to expect that party politics can be entirely eliminated from the management of the affairs of municipal corporations; but, by calling the attention of the people to the evil effects of introducing national party tests in the selection of officers who administer affairs in which party has no proper place, it may create a healthy and permanent public sentiment, which will, in the end, have a controlling influence in local government. . . .

THE PRESENT SYSTEM.

In order to show the complexity of our present system, and at the same time furnish a clear idea of the changes which we shall propose, the following statement of the different authorities which go to make up our city government, and the different sources of those authorities, is here given:—

Elected at large,—

The Mayor,
3 Street Commissioners,
24 School Committeemen.

Elected by Districts,—

12 Aldermen.

Elected by wards,—

72 Councilmen.

Appointed by the mayor,—

Mayor's clerk.

Elected by the City Council in convention,—

The City Clerk.

Appointed by the mayor and confirmed by the City Council,—

1 Inspector of buildings,
3 Commissioners of public parks,
3 Fire commissioners,
3 Board of Health,
5 Trustees of City Hospital,
5 Trustees of Public Library,
3 Police commissioners,
3 Water Board.

Elected by concurrent vote of the two branches of the City Council,—

5 Assessors of taxes,
33 First assistant assessors of taxes,

- 33 Second assistant assessors of taxes,
 - 1 Treasurer,
 - 1 Auditor,
 - 1 Collector,
 - 1 Clerk of committees,
 - 1 City messenger,
 - 1 Superintendent of Common and public grounds,
 - 7 Directors of ferries,
 - 2 Commissioners of sinking-funds,
- 10 Superintendents of principal bridges,
 - 1 City Registrar,
 - 5 Commissioners Cedar Grove Cemetery,
 - 2 Record commissioners,
 - 7 Trustees Mt. Hope Cemetery,
- 12 Directors public institutions,
- 12 Overseers of the poor,
 - 1 Corporation counsel,
 - 1 City Solicitor,
 - 1 Superintendent of public buildings,
 - 1 City architect,
 - 1 City engineer,
 - 1 City surveyor,
 - 1 Superintendent of streets,
 - 2 Trustees Public Library,
 - 2 Trustees City Hospital,
 - 1 Superintendent sewers,
 - 1 Superintendent printing,
 - 1 Inspector-in-chief and 3 assistant weighers and inspectors of ballast,
 - 1 Inspector of lime,
 - 5 Fence-viewers,
- 13 Field-drivers and pound-keepers,
 - 2 Cullers of hoops and staves.

Appointed by the mayor and confirmed by the aldermen,—

- 856 Election officers,
 - 1 Harbor master,
 - 1 Inspector of milk,
 - 1 Inspector of vinegar,
 - 1 Superintendent of lamps,
 - 1 Superintendent of Faneuil-Hall market.
 - 1 Inspectors of provisions,

- 3 Probation officers,
- 3 Registrars of voters,
- 1 Sealer and 4 deputy-sealers of weights and measures,
Constables without number,
- 3 Surveyors of marble, freestone and soapstone,
- 3 Inspectors of petroleum and coal oil,
- 9 Superintendents of hay-scales,
- 5 Measurers of upper leather,
- 23 Measurers of wood and bark,
- 12 Measurers of grain,
- 16 Inspectors of pressed or bundled hay and straw,
- 4 Weighers of beef,
- 3 Weighers of boilers and heavy machinery,
- 30 Weighers of coal.

Appointed by board of aldermen,—

- 9 Superintendents of Bridges.

It appears very clearly from the foregoing statement that the different city officers are elected or appointed without regard to any system, and in a manner calculated to destroy all responsibility.

A rule of the present City Council provides that every joint standing committee of the City Council shall have the general management and supervision of the department to which it has been assigned, subject in all respects to the special instructions of the City Council, and to the provisions of all statutes and lawful ordinances. . . .

It may be said then, that of the total appropriation of \$12,291,000 for city purposes during the present financial year, the expenditure of something over four millions, or one-third, is controlled directly or indirectly by committees of the aldermen or City Council.

The evil tendencies of this method of doing business are presented so clearly and forcibly in the report of the Pennsylvania Commission, that we cannot do better than quote what they say:—

“The great vice of the present system is the practical consolidation of legislative and executive powers in committees of city councils. The heads of departments appointed by the councils are merely the agents of these committees, not only in the administration of the trusts supposed to be committed to departments and in the appointment of subordinate officers, but in the payment of bills and current expenses not embraced in special contracts, thus afford-

ing the opportunity for, if not inviting, corrupt combinations between the two branches of city government. This condition of things exists only in city governments. It is not found either in the state or nation, and is believed to constitute a principal reason why the government of cities has proved the only failure under our Republican system."

The Commission recommended the limitation and restriction of the local assemblies in cities containing a population of fifty thousand or more inhabitants to the performance of legislative functions. "This divorce of the city councils," they say, "from all executive functions, and the express limitation of their powers to legislation needed for the efficient administration of the departments specially charged with such duties, not only removes the necessity for the creation of joint committees and the perpetual meetings of such bodies, but tends to render them less attractive to dishonest men. Stripped of all executive power there is nothing left for councils to do which may not be readily accomplished during the semiannual sessions proposed. This renders it possible for men of business, competent and trustworthy, who have, with all honest citizens, a common personal interest in the public welfare, to take part in the legislative branch of the municipal government. It will not be asking too much of them to give a limited portion of their attention to the honorable service of protecting and promoting the true interests of the community of which they form a part, whose character and credit, at home and abroad, are matters of deep and common concern."

. . . .

RECOMMENDATIONS

The defects in our present system appear so clearly in the foregoing statement, and are so generally admitted, that the need of thoroughly reorganizing it can hardly be questioned. While there will naturally be differences of opinion, as to the form of reorganization, there can be none as to the objects to be accomplished, namely greater efficiency and economy.

The experience of other large cities has shown that the only way to secure these is to separate and define the powers and duties of the legislative and executive departments, so that the people can fix the responsibility for inefficiency or a misuse of the public money, and be able to apply, directly and effectively, the remedy which the ballot gives them. There is a provision in the Constitution of

Massachusetts that the legislative department shall never exercise the executive or judicial powers; that the executive shall never exercise the legislative or judicial powers, and that the judicial shall never exercise the executive or legislative powers, "*to the end it may be a government of laws and not of men.*"

If that was a sound principle to incorporate into the government of the State when it contained a population of less than 300,000, and appropriated for the civil list only £30,000, it certainly ought to be incorporated into the government of a city with a population of 400,000 and an annual expenditure of \$12,000,000. For, although the city has no sovereign power, it exercises a police and financial power which offers greater temptation to abuse through the mixed exercise of legislative and executive power than the State government. In a small and homogenous community, where the municipal business is performed as a neighborly duty, and where the objects for which the public money is expended are few and well known, the evils of a mixed system and a divided responsibility are not conspicuous. But in a city of several hundred thousand inhabitants, with a government which has unlimited power of raising and disbursing the public money, the system is sure to lead to extravagance and corruption. The history of every large city in the country proves it. The abstracts of city charters, given in the appendix, show that in the leading cities the need of a strong and responsible government has led to the adoption of the principle embodied in our Constitution.

In recommending, therefore, as we do, that the legislative power of the local government be vested in the City Council, and that the executive power be vested in the mayor and certain heads of departments, we are recommending what long experience has shown to be the only safe and practical method of carrying on the government.

The state of confusion which exists in our government, and the almost unexampled burden of taxation which rests upon the people, is due largely, if not wholly, to the departure from that method. This we regard as the most important change in our present system which we have to propose. Certain other changes grow out of this one and are incidental to it.

If the City Council is deprived of executive power its remaining duties can be better performed by one body than by two. When the attention of the voters is directed to the selection of men for one board they will be likely to exercise more discrimination than

if their attention is divided between selections for two boards. One body having the responsibility is more amenable to public opinion than two, and the voters can the more easily fix the responsibility. By relieving the Council of the wear and tear which accompanies the selection of the subordinate executive officers, and by relieving its committees of executive duty, it will be possible "for men of business, competent and trustworthy, who have, with all honest citizens, a common and personal interest in the public welfare, to take part in the legislative branch of the government."

In place of the present council of seventy-two persons, elected by the several wards, we propose a council composed of two persons from each of the wards into which the city is, or will be, divided. This will give an adequate representation to all sections of the city; the body will not be too large for the prompt transaction of business, and it will not be so small that interested parties can easily control the majority.

In order to carry out the idea of separating the executive from the legislative department it is necessary that the mayor should have the appointment of all the heads of executive departments. We have already stated the objections to giving him the sole power of appointment. There are also serious objections to placing the power of confirmation in the legislative branch. It is in violation of the principle which, as we have shown, lies at the very foundation of responsible government. How, then, can we place a check upon the arbitrary exercise of power, without unduly interfering with the executive power and responsibility? The only satisfactory solution of the problem appears to be the establishment of an executive council, composed of a small number of persons, elected from the citizens at large upon the minority representation plan.

We propose, therefore, that at the election of mayor and members of the City Council each voter shall vote for three executive councillors, and that the five persons having the highest number of votes in the whole city shall be declared elected; that the persons so elected shall constitute an executive council to act upon the mayor's appointments of city officers; that they, with the mayor, shall exercise the powers now vested in the street commissioners, and shall also perform certain duties now performed by the Board of Aldermen, in relation to the inspection of prisons and houses of detention, the payment of State aid and the auditing of county accounts.

The office being one of real power and importance, but one which will not require so much time as the present aldermanic office with its executive and legislative duties, will call for, and be likely to attract, public-spirited and substantial citizens who, whether in the majority or minority, will be in a position to make their influence felt. By the method of selection proposed the minority will always be sure of a two-fifths representation. This plan works well wherever it has been tried. The minority representatives in the councils of other cities are said to be the most valuable members.

We propose that the terms of office of the mayor and members of the executive and city councils be extended to two years. This will tend to give greater stability to the municipal system, and will have a conservative influence upon the government. There are two objections to electing a part of the City Council each year. The people would not turn out to vote for a few members of the City Council and School Committee; and, if the government was a bad one, the election of a portion only of the legislative branch would not furnish an adequate remedy. The election once in two years of a responsible executive and the full legislative body will have sufficient importance to call out a full expression of the popular will; and on that we must rest our chances of good government.

In most of the large cities it has been found expedient, as a measure of economy, to allow a fair compensation for the services performed by the legislative department. There is no reason to call for gratuitous service here any more than in the General Court or jury-room. We propose, therefore, that the members of the City Council and Executive Council shall be paid what would be equivalent to about five dollars for each session in council or committee. It is better to fix a definite sum for the year's service than to allow compensation for each day's service, as there is a temptation under the latter method to multiply committee meetings and to misrepresent the amount of service performed.

In regard to the executive departments we propose that the number shall be considerably reduced, and that, with the exception of the office for issuing licenses for the sale of intoxicating liquors, and certain departments managed by unpaid boards, each department be placed under the charge of one person, who shall have power to appoint his subordinates,—the number of the subordinates, and the compensation of each, as well as of the head of the depart-

ment, to be fixed as heretofore by the City Council. There has been a growing feeling against the establishment of what are called "three-headed commissions,"—not so much on account of the expense involved as the divided responsibility, which prevents the citizens from holding an individual accountable for the management of the department. The adoption of the Civil Service Act removes from the domain of political and personal influence the appointment of subordinates in the several departments; so that the objection which has heretofore been urged against giving to one person such large powers of appointment as he would have in the police, fire, and water departments, no longer exists. . . .

It will be seen, by reference to the outlines of charters printed in the appendix, that many of the principal executive departments in other cities are under one head. The effort to secure efficiency and responsibility leads inevitably to the adoption of that system.

That the mayor should have the initiative in the appointment of the executive officers who have charge of the several departments is an essential part of our plan. The suggestion made in one of the communications printed in the appendix, that the City Council should elect these officers, and that the mayor should have the veto power over such elections, to the same extent as over ordinances, is open to serious objections. It is contrary to the first principles of good government to give to the legislative body, which has control of the public purse, the election or control (for the election carries with it the control, no matter what the laws and ordinances provide to the contrary) of the individuals through whom the money is to be expended. The veto power of the mayor would take the form of an objection to individuals, which would produce personal feeling and lead to antagonisms between the different departments of the government.

We have already shown that the present want of economy in the management of city affairs is due largely to the multiplicity of departments and of independent executive officers. Each head of a petty department naturally magnifies his office, demands large and handsomely furnished quarters, seeks to surround himself with a staff of clerks and subordinates, purchases his own supplies, and, deriving his power from the City Council, occupies a position in relation to the mayor, much the same as the mayor occupies in relation to the governor. It is easy, therefore, to account for the extraordinary difference in the running expenses of Boston and

those of most other cities in the country. In New York the executive business of the corporation (with the exception of the educational department) is carried on by twelve departments, including the mayor's;—five of the departments being under the charge of one commissioner each, four under the charge of three commissioners each, and two under the charge of four commissioners each,—making in all twenty-five persons.

In Brooklyn there are twelve departments, all but two (assessment of taxes and excise) governed by a single head.

In Boston we have thirty-seven different departments, controlled by one hundred and five persons, not including assistant assessors, superintendents of bridges, and numerous committees of the City Council, which, as we have already shown, exercise executive powers. . . .

We propose to reduce the number of departments by grouping those duties which can be performed more efficiently and economically by being placed under one head. . . .

It is proposed that the mayor shall have power to veto distinct items or subjects in any ordinance or order; that the mayor or any other municipal officer may be indicted, and, if found guilty, fined or removed from office for a palpable omission of duty or misconduct or misfeasance in the discharge of his duties; that the mayor shall, once a month or oftener, call the heads of departments together for consultation and advice upon the affairs of the city; and that the estimates for carrying on the several executive departments of the city shall be examined and revised by the mayor and executive council before being submitted to the City Council. . . .

In conclusion it may be said that all the changes proposed are based on experience and have been approved in practice. We have suggested nothing in the nature of an experiment. Those parts of our present system which appear to work well have been retained, and the method of carrying on the city business with which the people are familiar has not been greatly changed. No form of government can be devised which will, in the face of a majority of ignorant or indifferent voters, secure the election of honest and capable officers, and an impartial or economical administration of public affairs. "But," to quote the words of a recent mayor of this city, "it is hardly probable that a condition of things can arise in any city in New England where those who

have an interest in maintaining order will be outnumbered by those who hope for some personal benefit by creating disorder; therefore, if those who have interests at stake will bestir themselves to protect their interests,—and there is no safety in any scheme which can be devised unless they do so,—they can better accomplish their purpose by out-voting their opponents than by undertaking to deprive them of privileges which they now possess. The ballot is an educational power. The possession of it quickens the intelligence, and tends to bind the nation together. It is more important to have an alert, well-taught, and satisfied people than a theoretically good legislative machine.”

The most we can demand of the organic law is that it shall give free play to the better social forces, make public servants responsible for their acts, and put the minority in a position to enforce that responsibility, and to detect, expose, and punish the betrayal of public trust.

Respectfully submitted,

SAMUEL C. COBB.

JAMES M. BUGBEE.

JAMES B. RICHARDSON.

28. The Charter of the City of New York, 1901.

This is the existing charter of the City of New York, and the extracts which follow are presented as amended to the present time. In many ways, this is the most important city charter ever enacted in the United States. It was in most respects a substantial reënactment of the original Greater New York charter of 1897. The whole document is of extraordinary bulk, containing more than 1700 sections, and about 425,000 words. The points of greatest interest in the extracts which follow are the powers of the mayor and the composition and powers of the Board of Estimate and Apportionment. This board controls the finances and may be considered to be the real legislative body of the city.

SOURCE—*Laws of the State of New York*, 1901, Chap. 466, as amended by the *Laws* of 1905, Chap. 629 and Chap. 633; 1912, Chap. 131; 1916, Chap. 517 and 615; 1917, Chap. 258; 1920, Chap. 79; 1921, Chap. 670; and 1924, Chap. 295.

LEGISLATIVE DEPARTMENT.

Legislative power; where vested.

§ 17.¹ The legislative power of The City of New York, except as otherwise herein provided, shall be vested in one house to be known and styled as "the board of aldermen of The City of New York." . . .

Board of aldermen; president; quorum; salaries; vacancies, how filled.

§ 18.² The board of aldermen shall consist of members elected one from each of the aldermanic districts hereinafter provided for and of the president of the board of aldermen and of the presidents of the several boroughs. The president of the board of aldermen shall be chosen on a general ticket by the qualified voters of the city at the same time and for the same term as herein prescribed for the mayor. He shall be known as the president of the board of aldermen, and shall, except as herein provided, possess all the rights, privileges and powers, and perform the duties which on December thirty-first, eighteen hundred and ninety-seven, were conferred or imposed by law upon the president of the board of aldermen or the mayor, aldermen and commonalty of the City of New York. The aldermen shall be elected at the general election in the year nineteen hundred and one, and every two years thereafter. The term of office of each member of the board of aldermen shall commence on the first day of January after his election, and shall continue for two years thereafter. The phrase, all the members of the board of aldermen, wherever used in this act, shall be taken and held to mean all the members of said board, including the president of the board of aldermen and the presidents of the several boroughs. The phrase, members elected to the board of aldermen, wherever used in this act, shall be taken and held to mean all the members of said board, except the president of the board of aldermen and the presidents of the several boroughs. Any vacancy which may occur among the members elected to the board of aldermen shall be filled by election by a majority of all

¹ As amended by the *Laws* of 1905, Chap. 629. The power to enact local laws was in 1924 conferred upon a bicameral Municipal Assembly, consisting of the Board of Estimate and Apportionment and the Board of Aldermen, by the City Home Rule act, to be found as § 51.

² As amended by the *Laws* of 1912, chap. 131. The salaries of all members of the board of aldermen, except the president, were fixed at one thousand dollars a year by the act of 1901.

the members elected thereto, of a person who must be of the same political party as the member whose place has become vacant; and the person so elected to fill any such vacancy shall serve for the unexpired portion of the term. A majority of all the members of the board of aldermen shall constitute a quorum. The salary of the president of the board shall be five thousand dollars a year, the salary of the vice-chairman of the board shall be four thousand dollars a year, the salary of the chairman of the committee on finance shall be four thousand dollars a year and the salaries of the aldermen shall be two thousand dollars a year.

Aldermanic Districts.

§ 19.¹ The City of New York is hereby divided into sixty-five aldermanic districts as follows: . . .

When president of board of aldermen to act as mayor; powers; temporary chairman of board of aldermen.

§ 23. Whenever there shall be a vacancy in the office of mayor, or whenever, by reason of sickness or absence from the city, the mayor shall be prevented from attending to the duties of his office, the president of the board of aldermen shall act as mayor, and possess all the rights and powers of mayor during such disability or absence. In case of a vacancy he shall so act until noon of the first day of January succeeding the election at which the mayor's successor shall be chosen. It shall not be lawful for the president of the board of aldermen when acting as mayor in consequence of the sickness or absence from the city of the mayor to exercise any power of appointment to or removal from office, unless such sickness or absence of the mayor shall have continued thirty days; or to sign, approve or disapprove any ordinance or resolution unless such sickness or absence shall have continued at least nine days. The board of aldermen shall elect a vice-chairman to preside over its meetings, who shall possess the powers and perform the duties of the president of the board of aldermen, when the president is sick, absent or under suspension, or while the president of the board of aldermen is acting as mayor, or when a vacancy occurs in said office, and who shall, during such times, be a member of every board of which the president of said board of aldermen is a member by virtue of his office.

. . . .

¹ As amended by the *Laws* of 1921, Chap. 670. The act of 1901 created seventy-three aldermanic districts.

Heads of departments ; seats in board of aldermen ; when required to attend.

§ 25. Each head of an administrative department of the city shall be entitled to a seat in the board of aldermen and shall whenever required by it attend its meetings. He shall answer all questions put to him by any member relating to the affairs of his department, provided he shall have received forty-eight hours written notice thereof, and of the questions to be put. He shall have the right to participate in the discussions of said board, but shall not have the right to vote. If an administrative department is composed of more than one member, the president or presiding officer of such department shall be entitled to such seat.

. . . .

City clerk ; appointment ; term ; duties ;

§ 28. The board of aldermen shall whenever a vacancy occurs in the office of the city clerk, appoint a clerk, who shall perform such duties as may be prescribed for him. The clerk so appointed shall also be the city clerk and the clerk of the board of aldermen, and shall hold his office for six years, and until his successor shall be appointed and has qualified, unless removed for cause. . . .

Mayor's veto.

§ 40. Every ordinance or resolution shall, before it takes effect, be presented, duly certified, to the mayor for his approval. . . .

THE EXECUTIVE.**Mayor ; executive power in and election of ; salary.**

§ 94.¹ The executive power of The City of New York, as constituted by this act, shall be vested in the mayor, the presidents of the several boroughs and the officers of the several departments. The mayor shall be the chief executive officer of the city ; he shall be elected at the general election in the year nineteen hundred and five, and every four years thereafter, and shall hold his office for the term of four years commencing on the first day of January after his election. The salary of the mayor shall be fifteen thousand dollars a year.

Mayor's power of removal.

§ 95.² The mayor may whenever in his judgment the public interests shall so require, remove from office any public officer

¹ As amended by the *Laws* of 1905, Chap. 633. The act of 1901 fixed the mayor's term at two years.

² As amended by the *Laws* of 1920, Chap. 79, Sec. 97.

holding office by appointment from a mayor of The City of New York, except members of the board of education, and aqueduct commissioners, trustees of the College of The City of New York, and trustees of Bellevue and allied hospitals, and ~~except~~ also judicial officers for whose removal other provision is made by the constitution. No public officer shall hold his office for any specific term, except as in this act is otherwise expressly provided.

Administrative departments.

§ 96.¹ There shall be the following administrative departments in said city:

- Department of finance.
- Law department.
- Police department.
- Department of water supply, gas and electricity.
- Department of street cleaning.
- Department of plant and structures.
- Department of parks.
- Department of public welfare.
- Department of correction.
- Fire department.
- Department of docks.
- Department of taxes and assessments.
- Department of education.
- Department of health.
- Tenement house department.

§ 97.² The head of the department of finance shall be called the comptroller of The City of New York. He shall be elected at the general election in the year nineteen hundred and five, and every four years thereafter and shall hold his office for the term of four years, commencing on the first day of January, after his election. The comptroller may be removed from office by the governor in the same manner as sheriffs, except that the governor may direct the inquiry required by law, to be conducted by the attorney-general and after charges have been received by the governor, he may, pending the investigation, suspend the comptroller for a period not exceeding thirty days. In case of a vacancy in the office of comptroller, it shall be filled by the mayor,

¹ As amended by the *Laws* of 1920, Chap. 79, Sec. 97.

² As amended by the *Laws* of 1905, Chap. 633, which increased the comptroller's term of office from two years to four.

and the person appointed to fill such vacancy shall hold office until the first day of January succeeding the election at which a successor shall be elected. At the next general election at which municipal officers shall be elected, which shall take place more than thirty days after the occurrence of a vacancy in the office of comptroller, a successor shall be chosen who shall hold office for the remainder of the unexpired term.

. . . .

THE MAYOR

Mayors; duties of.

§ 115. It shall be the duty of the mayor:

1. To communicate to the board of aldermen, at least once in each year, a general statement of the finances, government and improvements of the city.

2. To recommend to the board of aldermen all such measures as he shall deem expedient.

3. To keep himself informed of the doings of the several departments.

4. To be vigilant and active in causing the ordinances of the city, and laws of the state to be executed and enforced, and for that purpose he may call together for consultation and co-operation any or all of the heads of departments.

5. And generally to perform all such duties as may be prescribed for him by this act, the city ordinances and the laws of the state.

Id.: a magistrate.

§ 116. The mayor is a magistrate.

. . . .

Id.: to appoint heads of departments.

§ 118. The mayor shall appoint the heads of departments and all commissioners, except as otherwise provided in this act. He shall also appoint all members of any board or commission authorized to superintend the erection or repair of any building belonging to or to be paid for by the city, whether named in any law or appointed by any local authority, and also a commissioner of jurors for the boroughs of Manhattan and the Bronx, inspectors of weights and measures as may by ordinance be prescribed, and also the members of any other local board and all other officers not elected by the people, whose appointment is not excepted or otherwise provided

for. Every head of department and person in this section named, shall, subject to the power of removal herein provided, hold his office for such term as is provided by this act, or otherwise, and in each case until a person is duly appointed, and has qualified, in his place.

Id.: to appoint commissioner of accounts.

§ 119.¹ The mayor shall appoint and remove at pleasure a commissioner of accounts. Such commissioner shall appoint and remove at pleasure two persons who shall be deputy commissioners of accounts, one of whom shall be a certified public accountant, and who shall perform such duties as the commissioner shall direct. When so designated by the commissioner either of such deputies may preside at any investigation authorized by this section. Such designation may be general in terms but shall not be for a longer period than three months, shall be in writing and filed in the office of the commissioner of accounts, and may be revoked at any time by the written order of the commissioner filed in such office. Either of such deputy commissioners, in the event of sickness, absence from the city of the commissioner, or in case there be a vacancy in the office of the commissioner, may be designated by the mayor with full power and authority to act for and in place of such commissioner. Such designation may be general in terms but shall not be for a longer period than three months, shall be in writing and filed in the office of the mayor and of the commissioners of accounts, and may be revoked at any time by the written order of the mayor filed in such offices. It shall be the duty of the commissioner of accounts, once in three months, to make an examination of the receipts and disbursements in the offices of the comptroller and chamberlain, in connection with those of all the departments and officers making returns thereto, and report to the mayor a detailed and classified statement of the financial condition of the city as shown by such examinations. He shall also make such special examinations of the accounts and methods of the departments and offices of the city and of the counties of New York, Richmond, Queens, Kings and Bronx, as the mayor may from time to time direct, and such other examinations as the said commissioner may deem for the best interests of the city, and

¹ As amended by the *Laws* of the 1916, Chap. 517, replacing the two commissioners provided for by the act of 1901, by a commissioner and two deputies. A local law enacted in 1924 made the office of the commissioner of accounts an administrative department,—the department of investigation and accounts.

report to the mayor and the board of aldermen the results thereof. For the purpose of ascertaining facts in connection with these examinations he shall have power to compel the attendance of witnesses, to administer oaths and to examine such persons as he may deem necessary. Such commissioner and deputies shall each be paid such salary as may be fixed by the board of estimate and apportionment and the board of aldermen pursuant to the provisions of section fifty-six of this act. The board of estimate and apportionment and the board of aldermen shall annually appropriate a sum sufficient to pay the salaries of said commissioner and deputies and in the discretion of said board enable the commissioner to employ the necessary assistance to carry out the provisions of this section.

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Id.: removal by governor.

§ 122. The mayor may be removed from office by the governor in the same manner as sheriffs, except that the governor may direct the inquiry provided by law to be conducted by the attorney-general; and after the charges have been received by the governor, he may, pending the investigation, suspend the mayor for a period not exceeding thirty days.

Municipal civil service; mayor to appoint commissioners.

§ 123. The mayor shall appoint three or more suitable persons, not more than two-thirds of whom shall be members of the same political party, who shall, in the manner defined by chapter three of the general laws, commonly known as the civil service law, and subject to and in pursuance of the provisions of that law and of such amendments as may from time to time be made to it, prescribe, amend and enforce rules for the classification of the offices, places and employments in the public service of the city, and for the appointments and promotions therein, and examinations therefor, and for the registration and selection of laborers for employment therein. Such persons shall constitute the municipal civil service commission, and, within the amount appropriated therefor, they shall have authority to appoint a secretary, examiners, and such other subordinates as may be necessary. Proper provision shall be made in the annual budget for all the expenses of the municipal civil service commission.

. . . .

APPROPRIATIONS AND THE BOARD OF ESTIMATE AND
APPORTIONMENT**How constituted; duties; the annual budget.**

§ 226.¹ The mayor, comptroller, president of the board of aldermen, and the presidents of the boroughs of Manhattan, Brooklyn, The Bronx, Queens and Richmond shall constitute the board of estimate and apportionment. Except as otherwise specifically provided, every act of the board of estimate and apportionment shall be by resolution adopted by the majority of the whole number of votes authorized by this section to be cast by said board. The mayor, comptroller and the president of the board of aldermen shall each be entitled to cast three votes; the presidents of the boroughs of Manhattan and Brooklyn shall each be entitled to cast two votes; and the presidents of the boroughs of The Bronx, Queens, and Richmond shall each be entitled to cast one vote. A quorum of said board shall consist of a sufficient number of the members thereof to cast nine votes, of whom at least two of the members hereby authorized to cast three votes each shall be present. No resolution or amendment of any resolution shall be passed at the same meeting at which it is originally presented unless twelve votes shall be cast for its adoption. The first meeting of said board in every year shall be called by notice from the mayor, personally served upon the members of said board. Subsequent meetings shall be called as the said board shall direct, and at such meetings the mayor, or in his absence the president of the board of aldermen, shall preside. The said board shall annually between the first day of October and the first day of November meet, and make a budget of the amounts estimated to be required to pay the expenses of the conducting the public business of the city of New York, as constituted by this act and of the counties of New York, Kings, Bronx, Queens and Richmond for the then next ensuing year. Such budget shall be prepared in such detail as to the titles of appropriations, the terms and conditions, not inconsistent with law, under which the same may be expended, the aggregate sum and the items thereof allowed to each department, bureau, office, board or commission, as the said board of estimate and apportionment shall deem advisable. In order to enable said board to make such budget, the presidents of the several boroughs, the heads of departments, bureaus, offices, boards and commissions shall, not later than August

¹ As amended by the *Laws* of 1917, Chap. 258.

first, send to the board of estimate and apportionment an estimate in writing, herein called a departmental estimate, of the amount of expenditure, specifying in detail the objects thereof, required in their respective departments, bureaus, offices, boards and commissions, including a statement of each of the salaries of their officers, clerks, employees and subordinates. Duplicates of these departmental estimates and statements shall be sent at the same time to the board of aldermen. On or before the tenth day of October, such board shall prepare for public discussion a printed tentative budget. On or before the twentieth day of October, such board shall prepare and file with its secretary the budget proposed for adoption which may not thereafter be increased in any item or contain any new item, but any item may be decreased or eliminated by action of such board between October twentieth and the date of its final adoption. Before finally determining upon the budget the board of estimate and apportionment shall fix such sufficient time or times so appointed for such hearing. After such budget is made by the board of estimate and apportionment, it shall be submitted by said board within five days to the board of aldermen, whereupon a special meeting of the board of aldermen shall be called by the mayor to consider such budget, and the same shall simultaneously be published in the City Record. The consideration of such budget by the board of aldermen shall continue from day to day until final action is taken thereon, but such consideration shall not continue beyond twenty days, and in the event of said board of aldermen taking no action thereon within such period of time the said budget shall be deemed to be finally adopted as submitted by the board of estimate and apportionment. The board of aldermen may reduce the said several amounts fixed by the board of estimate and apportionment, except such amounts as are now or may be inserted by the said board of estimate and apportionment for the payment of state taxes and payment of interest and principal of the city debt, but the board of aldermen may not increase such amounts nor vary the terms and conditions thereof, nor insert any new items. Such action of the board of aldermen on reducing any item or amount fixed by the board of estimate and apportionment shall be subject to the veto power of the mayor as elsewhere provided in this act, and unless such veto is overridden by a three-fourths-vote of the board of aldermen, the item or amount as fixed by the board of estimate and apportionment shall stand as part of the budget. Prior to December twenty-

fifth in each year the budget, as finally adopted pursuant to the provisions of this section, shall be certified by the mayor, comptroller and city clerk, whereupon the said several sums shall be and become appropriated to the several purposes therein named. On or before December thirty-first in each year the said budget shall be filed in the office of the comptroller and published in the City Record. . . .

Board of estimate and apportionment; powers with respect to certain subjects.

§ 242.¹ The board of estimate and apportionment shall have power over the following subjects: . . .

The board of estimate and apportionment shall have also (3) the control of all the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all other public grounds and waters within or belonging to the city; except as in this act otherwise provided. The powers by this act granted to the board of aldermen with respect to the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, docks, waterways, bulkheads, wharves, piers and public grounds and waters which are within or belong to the city shall be subject to such control of the board of estimate and apportionment. If and when the board of estimate and apportionment shall deem it proper in the case of any application or matter affecting any street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, wharf, pier or public ground or water within or belonging to the city, whether the board of aldermen or any other department or officer shall have acted or omitted to act, the board of estimate and apportionment may itself originally act or may, by amendment, revision or repeal of any resolution, ordinance, grant or other action adopted or had by the board of aldermen or any other department or officer, exercise its said power of control; and if and when the board of estimate and apportionment shall so act or exercise such control, such action or control shall be fully and finally operative, notwithstanding any resolution, ordinance, grant, or other action adopted or had by the board of aldermen or any other department or officer of the city or any omission to act on the part of the board of aldermen or other department or officer. The board of estimate and apportionment shall

¹ As amended by the *Laws* of 1905, Chap. 629.

hereafter, except in the cases where franchises, rights or contracts shall be granted or authorized pursuant to the rapid transit act, chapter four of the laws of eighteen hundred and ninety-one, and the amendments thereof, have the exclusive power in behalf of the city to grant to persons or corporations franchises or rights or make contracts providing for or involving the occupation or use of any of the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers or public grounds or waters within or belonging to the city, whether on, under or over the surface thereof, for railroads, pipe or other conduits or ways or otherwise for the transportation of persons or property or the transmission of gas, electricity, steam, light, heat or power, provided, however, that no such exercise of power by the board of estimate and apportionment shall be operative until the same shall be in writing approved by the mayor separately from and after the action of the board of estimate and apportionment; and provided, further, that this section shall not prevent the exercise by the board of aldermen of the powers expressly granted it by sections forty-nine, fifty, fifty-one and fifty-two of this act, but such exercise of powers by the board of aldermen shall in every case be subject to the control by this act granted to the board of estimate and apportionment over all the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, and all public grounds and waters, which are within or belong to the city. If and when the board of rapid transit railroad commissioners of The City of New York shall, under any of the provisions of chapter four of the laws of eighteen hundred and ninety-one or of any of the acts amending the same, conclude or determine upon the construction of any rapid transit railway or railways or adopt any route or routes, plans or specifications therefor, or if and when the said board of rapid transit railroad commissioners shall grant any right or rights, franchises or enter into any contract or contracts under any of the provisions of the said chapter four of the said laws of eighteen hundred and ninety-one or any of the said amendments thereof, the said board shall transmit to the board of estimate and apportionment a copy of any and every such determination or conclusion, grant or contract, and in case any such determination, conclusion, route, plan, specification, right, franchise, or contract, shall require or involve the use of any street, avenue, highway, boulevard, concourse, driveway, bridge,

tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier or any public ground or water which is within or belongs to the city, the said board of estimate and apportionment shall within sixty days after the receipt by it of such copy of such determination, conclusion, grant or contract determine whether or not it will, as the local authority having the control of such street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, dock, waterway, bulkhead, wharf, pier or other public ground or water which is within or belongs to the city, consent or refuse to consent to such route, determination, conclusion, plan, specification, right, franchise or contract, and shall within such sixty days transmit in writing to the said board of rapid transit railroad commissioners its said determination whether of consent or refusal. Provided, however, that the said board of estimate and apportionment and the said board of rapid transit may by resolution adopted by each of them extend such period of sixty days. Hereafter no consent or approval of any such determination, conclusion, route, plan, specification, right, franchise or contract by the board of aldermen or any department or officer of the city shall be necessary.

Board of estimate: power to regulate height of buildings, and to amend, supplement and change regulations.

§ 242-a.¹ The board of estimate and apportionment shall have power to regulate and limit the height and bulk of buildings hereafter erected and to regulate and determine the area of yards, courts and other open spaces.

Powers of board of aldermen; bonds for improvements; all powers subject to control of board of estimate.

§ 47.² The board of aldermen shall have power to provide by ordinance for the acquisition, construction or establishment of markets; for the acquisition and construction of parks, parkways, playgrounds, boulevards and driveways; for the building of bridges over, and of tunnels under any stream or waterway within or adjoining the limits of the city; for the building of docks, wharves or piers, and for acquiring land by purchase or condemnation, for said purposes; for acquiring, constructing, improving, permanently bettering and equipping public buildings, including school houses, libraries and sites therefor for the use of the city; for the repaving

¹ As amended by the *Laws* of 1924, Chap. 296.

² As amended by the *Laws* of 1916, Chap. 615.

of streets; for building, repairing and equipping boats and vessels or other floating craft of any kind, that may be needed for the use and purposes of the city; for the establishing, building and equipping of telegraph or other systems of communication for the use and purposes of the police department and other departments of the city government; for the construction and equipment of public comfort stations; for the making and completing of maps of all the territory embraced within each of the boroughs of said city; for the making and completing of surveys, maps and profiles in condemnation proceedings; and for any of the foregoing purposes may create loans and authorize the issue of bonds or other evidences of indebtedness, to pay for the same, payable at such times and in such manner, subject to the limitations contained in section one hundred and sixty-nine of this act, as it may by ordinance prescribe; and at such rates of interest as the board of commissioners of the sinking fund may prescribe; but no bonds or other evidences of indebtedness shall be issued under the authority of this section, unless the proposition for creating such shall first be approved by a majority vote of the whole board of estimate and apportionment, entered in the minutes of record of such board. In case any bonds or corporate stock shall have been heretofore issued under authority of this section, as to which the board of aldermen did not prescribe any rate of interest by ordinance, the rate that may have been otherwise fixed and specified shall be the legal and valid rate. In addition to the specific purposes hereinbefore set forth the board of aldermen may also create loans and authorize the issue of bonds for any other purpose connected with the exercise of the various powers conferred by this act upon the city of New York or any department or official thereof; provided, however, that no bonds or other evidences of indebtedness shall be issued for such additional purposes unless first approved by a unanimous vote of the board of estimate and apportionment, entered upon the minutes of record of said board; provided, however, that all the powers in this section or elsewhere in this act granted to the board of aldermen shall be subject to the control of the board of estimate and apportionment over all the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all public grounds and waters which are within or belong to the city as provided in this act, subject, however, to the limitation contained in section one hundred and sixty-nine of this act.

29. Report of the Boston Finance Commission of 1909.

The original Boston Finance Commission was established by orders of the city council in 1907. These orders were confirmed and extended by acts of the legislature of Massachusetts, to which the commission made its final report. Between 1905 and 1907 Boston had passed through a period of extraordinary corruption. The Finance Commission probed this situation in detail and made a very comprehensive study of the subject of sound organization for the city. Its final report presents, in condensed form, a great deal of information concerning the existing government of Boston and a very well balanced criticism of various projects of reform.

SOURCE—Final Report of the Boston Finance Commission, in its *Reports and Communications* (Boston, 1909), II, 196-240.

The Elective Officers.

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The possession of concurrent power over appropriations and loans, aggregating \$25,000,000 a year, and over the municipal ordinances for a population of 600,000 people, would seem to furnish sufficient honor to make a seat in the city council an object of legitimate ambition, and to cause whatever sacrifice of time may be involved to be looked upon as civic duty. Membership in the city council, however, is quite generally regarded as a discredit rather than an honor; and it is difficult to induce representative men to become candidates for either branch.

. . . The reasons for the disrepute into which the city council has fallen, and for the consequent disinclination of competent and representative citizens to serve in it, are to be found in the conduct of that body and its members.

The city council as a body gives no serious consideration to its duties. In 1907 twenty-eight of the forty-two joint standing committees had no papers referred to them, and held no meetings. In the common council of that year four hundred and seventy orders were introduced and "referred to the mayor," without discussion or vote. Its work on the annual appropriations bill consists generally of attempting to raise the mayor's estimates to the maximum amount allowed by law, with a preference for those

departments where the patronage is largest. Loan bills are log-rolled through with more regard for the demands of interested constituents and the possibility of jobs than for the needs of the city as a whole. The annual borrowing capacity of the city within the debt limit is treated as affording so much more money to be spent; and every occasion is seized to petition the legislature for leave to borrow additional millions outside the debt limit. This phrase, the "debt limit," has lost its meaning, and each additional authorization to borrow in excess of it is regarded as a "gift" of money by the state to be spent as soon as the act can be accepted. . . .

Many members spend their time in violating the charter by besieging the heads of departments to employ men, raise salaries, give out contracts, and order goods for the benefit of their political supporters and constituents. If persistent entreaties are insufficient to cause the heads of departments to swerve from their duty, recourse is often had to scurrilous attacks on the floor of the city council which are printed in the daily papers and perpetuated in the official publications of the city.

These illegal efforts are often directed to the pecuniary benefit of the members themselves. In the belief that they could not contract directly with the city, the practice has arisen of making contracts and selling goods under assumed names, or as silent partners with contractors or material men. The reports of the commission show that these collusive methods were freely resorted to by members of the board of aldermen and common council.

The proceedings of the city council are taken down verbatim, written out, corrected and printed at a cost of some \$20,000 a year. This practice is unusual and unnecessary, is unduly expensive, and opens the way, not infrequently pursued, to blackmail and libel. The proceedings should be read if one would gain a full view of the utter disregard for efficient administration, civic honesty and the responsibility of spending other people's money displayed by the members of the city council. It is not too much to say that, under the present system, there have been two legislative bodies, each intellectually and morally incapable of action in the interest of the citizens at large.

It should be understood that except where dates are mentioned, the commission is speaking generally of conditions, and that the foregoing description of the conduct of the city council and the members does not apply to every session or to all the members. . . .

There is still a considerable amount of petty and unimportant work within the jurisdiction of the city council which requires a great deal of time. This work could be done much better and quicker by the executive departments. The performance of these duties takes so much time, particularly in the case of the board of aldermen, as to increase the disinclination of busy men to serve in that body.

It is clear that the city council as now constituted is too large and cumbersome a body for effective action, that the term of office is too short, that it has too much work of minor importance to do, and that the mode of nomination is prohibitive of the best results.

The Executive Departments.

The commission found the executive business of the city divided among too many departments, created in many instances for the purpose of furnishing high-salaried offices, which could be filled without recourse to the civil service lists. . . .

Most of the heads of departments are appointed for annual terms, and most are subject to confirmation by the board of aldermen. They must, therefore, be reappointed and confirmed anew each year. The existence of this power of confirmation on the part of the board of aldermen means too frequently either a bargain between the board and the mayor, in which the interests of the city are sure to suffer, or intimidation of the heads of departments by the aldermen, and improper appointments, unwarranted increases of salary, collusive contracts, and other executive misconduct.

While the members of the common council, having nothing to do with the confirmation of appointments, have less power than the members of the board of aldermen, they are seventy-five in number, and their importunities on the whole may be even more effective than those of the aldermen.

The position of the head of a department under the present form of government, subject to intimidation from one man who has the power to remove him, from thirteen men who may refuse to confirm his reappointment, and from seventy-five others who have the power officially and publicly to abuse him, without opportunity for reply, is intolerable. Young men, graduates of the Institute of Technology and other similar institutions, who ought to constitute one of the classes from which the heads of departments could be chosen, are advised by their instructors not to enter the

city's service; and in the case of the salaried officers, it is as difficult for a well meaning mayor to secure efficient heads of departments as it is for the people to induce competent and disinterested citizens to stand for the city council.

The result of these conditions, which had been gradually growing worse, was that there had been a steady deterioration in the technical competency and moral strength of the heads of the executive departments, until at the time when this investigation was ordered the administrative business of this great city was, so far at least as the salaried heads of departments went, with a few notable exceptions, in the hands either of men without education, training, experience, or technical qualifications of any sort, or of men who had become so demoralized by the conditions which surrounded them as to be unwilling to protest against the most obvious extravagance and graft, if favored by the mayor.

One of the most discouraging facts noted was the passive acquiescence, during the period under discussion, of the city engineer, the schoolhouse commission, the health commissioners, the water commissioner, the fire commissioner and the law department, in transactions which they knew involved a waste of city money.

The members of boards who give a portion of their time, often considerable, to the service of the city, without compensation, are not subject to the temptation which the occupation of a salaried office offers, and have generally not permitted themselves to mismanage the business entrusted to them under intimidation by the city council or dictation by the mayor. The influence of the spoils system, however, was rapidly making itself felt in these departments also; and the danger of independence was vividly illustrated by the case of the pauper institutions trustees, who were removed from office in 1907 because they had the courage to refuse to retain an unfit superintendent in the face of the mayor's determination to keep him. . . .

Attention has also been called in the reports of the commission and its experts to the fact that the efficiency of the labor employed directly by the city had steadily decreased until in 1907 it reached a point where the amount of work done for the city per man per day was only half as much as it had been prior to 1895.

It is also shown in these reports that the cause of the decrease in efficiency as well as of the unnecessary increase in number was political; that is, that the pay rolls were swollen for the political purposes of the administration for the time being. For similar

reasons all pretence of discipline in the larger departments had been abandoned. Incompetency, drunkenness and insubordination were seldom visited by suspension, still less frequently by discharge.

The labor problem is one of the most serious which confronts the city government at the present time, particularly the difficulty of reducing the number of employees to that reasonably necessary to perform such work as can best be done by day labor, in view of the fact that a very considerable number of these men have grown old in the service of the city and are incapacitated by age rather than by unwillingness to work. The continuation of these men upon the pay rolls is not only expensive for the city, as they cannot perform a full day's work, but necessarily operates to demoralize the rest of the force. On the other hand, to discharge without further compensation such of these men as are willing to work as well as they can is a measure from which most administrations naturally shrink. . . .

The practice of keeping an excessive number of men on the pay rolls throughout the entire year, of attempting to do work in winter which cannot properly be done at that season of the year, and of doing by day labor work which can be done much better and more economically by contract, is responsible for a large part of the waste, inefficiency and general demoralization of the city government. It also exerts a corrupting influence on the public morals, and is one of the main causes for the spread of the theory that the city treasury can properly be used for the benefit of individuals and classes, rather than for the common good of all the citizens.

The argument advanced by the politicians that it is to the general interest of labor that as many men be employed by the city as the treasury will stand, is not only false with regard to the interests of the city as a corporation, but is inadmissible from the standpoint of labor itself. The real motive of the politicians who advocate such a policy is simply to get men on the pay roll who in return will help them to be elected or re-elected to public office; and it is a short step from this proposition to advocating for similar purposes the waste of money in non-competitive contracts and purchases.

If, for instance, out of \$2,500,000 spent nominally for sewer or water works construction \$1,750,000 is the fair cost of the work and \$500,000 in addition is spent for superfluous labor and \$250,000 more in excess prices for contracts and purchases, entered into

without competition with favored individuals, it is easy to see that all sections and classes of the community, laborers as well as property owners, are defrauded out of \$750,000, or 30 per cent. of the entire outlay. It cannot profit the interest of the laboring population as a whole that \$500,000 is given to individual employees, hired nominally as laborers but performing no useful work; for if this sum is not spent in this way it could be expended for useful labor on other sewers, or water mains, or on the schools, streets and public buildings. Its use for this purpose would give equally large employment to labor, and would result in permanent improvements benefiting the whole people of the city, including all those who are dependent upon their daily labor. To spend this \$500,000 in pay rolls rather than for actual labor must be regarded as a use of public money unjustifiable from every standpoint. The loss of the remaining \$250,000 in excessive contract prices is still more inexcusable. No one is benefited but the individual contractors who get the money and the politicians with whom they divide it. The contracting class loses, because the money if not wasted on the favorites of the administration would be available for other necessary public work. The community loses the entire \$750,000, whether it is spent for unnecessary labor, or given outright to political contractors.

There is another aspect of this matter which should not be overlooked. The excessive number of city employees, far greater relatively than in any other city which has come to the notice of the commission, creates a political danger of the first magnitude. There are about 10,000 registered voters in the employ of the city. When we consider that each of these 10,000 employees may be able to sway an additional vote and thus bring the "City Hall vote" to 20,000, and that 40,000 have never been required to carry a mayoralty election, the menace implied in such an army of municipal employees is obvious. . . .

Many ingenious devices, some old and some new, were used to circumvent the civil service law,—such as the employment of "emergency" men for five days and their reëmployment for succeeding periods; "provisional" appointments until such time as an examination could be held by the civil service commissioners; the employment of "regular extra" men; and the creation of positions under all sorts of designations for the performance of duties which might be performed by ordinary laborers on the regular lists. Some of these designations were truly descriptive of a special line of

work; but usually there was not enough work of the kind to keep a man employed more than a small fraction of the day, and while in some cases he performed another kind of work (for which, however, he was not legally employed), in most cases he did nothing whatever in the spare time. Examples of these designations are axman, barn boss, tallyman, dumper, feeder, tagman, brick-slinger, plank driver, wiper, messenger's aid, caretaker of instruments, rubber boot repairer, tankman and tea warmer. . . .

The investigations of the commission have disclosed an outrageous waste of public money in non-competitive contracts, some awarded surreptitiously, others without pretense of concealment, as political gifts to the friends and supporters of the administration.

The law intended that contracts over \$2,000 in amount should be awarded after a public advertised competition, but for special cases where a different course might plainly be for the interest of the city, it was provided that advertisement could be dispensed with on the written approval of the mayor. This permission was so frequently given in 1906 and 1907 that the law was practically nullified. The exception had become the rule, and evasion was regarded as compliance; the department heads often receiving orders from the mayor to request his assent to the award of contracts without advertisement. The loss to the city on these contracts was very large.

In the matter of contracts under \$2,000 there was seldom any pretence of competition; the work was "handed out" to selected contractors, often members of the city council in disguise, always friendly to the administration. These were called "gift" contracts, and as they were obtained by favor, the inspection was lax, the performance often poor, and the cost always excessive.

The purchase of supplies was also treated as the legitimate spoils of the successful party at the municipal election, and in this way additional thousands of dollars have been annually wasted in excess prices paid for materials and supplies to political dealers and middlemen. . . .

The dishonesty was not confined to any one class in the community. Reputable business houses, including some of the largest corporations in the country, conspired to defraud the city, descending in some instances to the acceptance of such petty sums as \$300, \$200 and \$150 as their share of the plunder. The treasurer of one of these large corporations, who had been a member of the Governor's council, justified his company's share in these dealings as a

part of its regular business methods, and as "an entirely proper business transaction." The treasurer of another company testified that his concern had done much business with the city, that on several occasions he had paid money to competitors for putting in apparently genuine bids which by preconcerted agreement were higher than his, and that his company had paid out a part of its profits for this accommodation. He admitted also that he had destroyed the books of the company which would disclose these transactions. Two fireproofing concerns doing an extensive business in this city combined for the purpose of parcelling out the work. Contract for contract was generally conceded, although in some cases money was paid as the price of abstaining from competition. Both concerns, by keeping up the appearance of an active and real competition, with the attendant circumstances of figuring and bidding, gave the city officials to understand that there was no collusion. Even charity secured no exemption, and the profits obtained from a hospital, a home for crippled children, and the city of Boston, were united in one check which represented the cost of collusion on these jobs. . . .

The Administration of 1906 and 1907.

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As illustrations of the manner in which the business of the city was conducted the following instances are cited for the information of the general court.

In the public grounds department a collusive competition for the construction of certain walks on the common was held for the benefit of an influential member of the board of aldermen, contracting in another person's name. The mayor and city engineer were parties to the transaction in the sense of having had sufficient knowledge of the facts to have stopped it had they seen fit. Six other contracts for connecting walks were subsequently given to the same person without any pretense of competition, the work having been split into separate jobs to avoid advertisement. The city engineer said that the work was perfectly simple, and that there was no reason for not inviting competition by advertisement; but he did not consider it his duty to volunteer advice, and he prepared the papers without protest. . . .

[There was an utter lack of discipline over the employees in the sewer department.]

Some employees had enough influence to procure reinstatement

after discharge; others got transfers from strict foremen to lenient ones; and others procured positions which required no mental or physical effort. One time-keeper carried a book from the office to the job once or twice a day; a carriage painter worked an hour some days, and on many days never appeared at all; two men were stationed on a dump for more than a week after the wagons ceased to visit it; one man had nine lanterns to fill and clean each day, another twelve; some had only to hang up rubber boots to dry; a "siphon" man attended an hydraulic siphon which needed no attention; a "rubber goods repairer" who ordinarily had nothing to do sometimes assisted a clerk who had little to do; one store-keeper hardly ever appeared in the storeroom; a "stenographer" at \$1,600 per annum seldom reported for any duty except that of political messenger; a "janitor" drew pay for seven weeks while he was sojourning in Europe. In districts 1 to 10, inclusive, out of 579 men 144 were employed as watchmen or in other positions which required little effort, and 60 of these performed work of exceedingly slight value, or none at all. Inspectors were frequent offenders, and many of their written returns were practically useless. In some cases they were written wholly from imagination. The inspectors of catch-basins inspected usually from three to six basins a day, rarely over ten, although a fair day's work is fifty. Catch-basins which did not exist were included in the cleaning contracts at a fixed and excessive price; other basins were included in more than one contract, and paid for twice.

The average number of bricks laid per mason per hour on work in charge of the metropolitan water and sewerage board was 224, and on one job done by the city under contract 242; while on the work done by the sewer department force the average in the week most productive of results was only 115, the general average was 50, and it dropped on one job to 4. The labor cost of laying brick for the Metropolitan sewers under competitive contracts varied, according to the conditions of the different jobs, from \$1.82 per thousand to \$4.23 per thousand. The cost by contract of similar work to the city of Boston varied from \$2.98 to \$7.35 per thousand. On the other hand, the mason cost to the city of Boston on sewer work done by day labor in 1906 and 1907, varied from \$9.04, the lowest, to \$18.34, the highest. These figures are all reduced to the same wage basis. Generally speaking the mason work done by the department force cost from three to six times as much as that in charge of the metropolitan water and sewerage board. . . .

So general was the feeling that the city was merely a field for political and personal exploitation, that it became a common practice to use city property for private purposes, often in the pettiest way. Thus during the campaign of 1906 a yard in the paving department was reorganized and a new and unnecessary foreman added to the pay rolls to advance the political interests of a Democratic candidate for congress. This foreman frankly stated to the commission: "I owed my position to politics, and I felt I ought to do what I could to help when it didn't hurt anybody." City horses and carriages were used freely on behalf of this candidate for congress; and at the annual outing in the summer of 1907 of his club, employees of the city used the city's time in preparing for and conducting the club's dinner. Lumber for constructing the tables, seats and stands was bought and paid for by the city. The requisition was made out a month after the lumber was bought and stated falsely that it was for use at the city stables. A part only of this lumber was finally turned over to the city. This is a practical illustration of what is meant by "not hurting anybody."

This theory was carried to its logical end by a member of the board of aldermen of 1906 and 1907 who, as a member of a committee of that body, took for his own use a part of the money paid by the city on fictitious bills for goods ordered by him; and in the pretended purchase in 1908 by the president of the common council for city use of books which were paid for by the city upon a false bill, without delivery by the alleged seller. . . .

A Democratic politician who had supported the mayor received as his reward the patronage of the department in his section of the city. Other political contractors and middlemen who had contributed to the mayor's success were awarded other sections of the city. This witness gave the following account of the patronage system.

The mayor got elected, and he took care of his friends.
I was one of his friends and I got it.

Speaking of a certain other dealer, he said:

He would have the right to sell in his section.

Q. He would have the right to sell in it as against anybody else?

A. No, he has no right, but he gets the orders.

Speaking of another dealer, he said:

I don't know as he got any district. He should not have any district by right, because he was against the administration.

The general system he described as follows:

I think the patronage of the district is generally paid this way. They have friends in each district, and they will be given the patronage, all things being equal, the price and every thing.

Q. The consideration of your getting in was political, wasn't it?

A. I don't know what you call it. Call it what you please.

Q. What does get it?

A. Friendship.

Q. The friendship was prompted by what?

A. To the victor belong the spoils. . . .

Remedies Considered But Not Adopted.

The "Greater Boston" Plan.—Some persons see a remedy for misgovernment in Boston in a municipal consolidation or federation of the metropolitan district. A large majority of the towns and cities appear, however, to be opposed at the present time to any union with this city, and it is not clear to the commission that good results would necessarily follow the creation of a "Greater Boston."

The chief argument advanced by the advocates of consolidation or federation is that the electorate of the present city is not fairly representative of the community as a whole, and that the more conservative part of it resides in the suburban towns and cities. It does not appear to the commission, however, that there are any such radical differences in origin, intelligence or conditions, as to make it certain that the public affairs of the community would be better carried on if town and city lines were abolished. Most of the cities and towns within the district are suffering in some degree from the same political evils.

The results achieved in "Greater New York" and by the Ad-

ministrative County of London have not been so satisfactory as to encourage the belief that we can improve the government of the city by simply increasing its size.

While entertaining little doubt that in the course of time the metropolitan district will be converted into a single municipality, the commission believes that this course should not be considered seriously until Boston has demonstrated its capacity to govern itself. Reform should precede enlargement.

The "Elective Commission" Plan.—The commission has given careful consideration to the plan, recently adopted by a few relatively small cities, including some in this state, of vesting the entire government of the city in the hands of a small elected board or commission.

An elective commission would be a return to the principle of the charter of 1822, in so far as that instrument withheld executive power and responsibility from the mayor.

If the electorate will choose a bad mayor, a majority, or possibly all, of the officials elected under the commission plan would probably be men of the same character. The city would then be at the mercy of three or five bad men instead of one, and each could avoid responsibility by throwing it on the others.

For small cities suffering under the rule of committee government, the "elective commission" plan presents many advantages, and to such cities the plan has so far been confined. It is, however, too early to draw conclusions from these experiments. None of them is yet fairly in operation, except in Galveston, where the conditions of the suffrage are very different from those which obtain in the cities of the north. Even if ultimately successful in smaller cities, there is no assurance that the plan would work when applied to a city like Boston, with a population exceeding 600,000, spending \$25,000,000 a year, and presenting political and municipal conditions and problems different not only in degree but in kind.

The experience of the city under the school committee law of 1905 is not necessarily in point; for the opportunities for politics, patronage, corruption and waste in the management of the public schools are slight in comparison with those which are offered by the city government as a whole. Under the law of 1901 establishing the schoolhouse department, the school committee was purposely deprived of the power to buy land, and construct, repair and furnish school buildings; and this power was not restored to the school committee when reconstructed in 1905. The new plan has

been in operation only three years, and its permanent value has not yet been demonstrated.

The school committee system furnishes no more of an argument for an elective commission than the success of the state in recent years in the management of the police and license problems is an argument for putting the entire city government in the hands of a commission appointed by the governor.

A closer analogy is presented by the boards of county commissioners. The general opinion seems to be that these boards have not proved a success.

All large and successful corporations are practically managed by one man under the supervision of the directors. If there is any defect in this system it is the frequent failure of the directors to supervise, not their failure to manage the executive part of the company's business.

There is at the present time a lively interest in municipal reform in all the large cities of the country; but in none of them does there appear to be any desire for an elective commission. No one with experience in the city government of Boston has favored its adoption for this city.

The "Town Meeting" Plan.—Another proposed reform is founded upon the assumption that it is possible to secure for a large city the benefits of the New England town meeting by means of a large city council, consisting of several hundred members, elected by wards or precincts.

If this plan includes vesting the city council with the executive powers of the city, it would at once restore the evils of government by irresponsible committees from which the citizens tried to escape in 1885.

If, however, it is proposed to leave the executive power in the hands of a single officer, the mayor, and merely to enlarge the appropriating body by electing one member of the city council from each precinct, the plan seems to have much to commend it. A body of 200 or 300 persons elected by precincts with its functions restricted to the voting of appropriations, loans, franchises, etc., might exercise these powers more conservatively than one or two small bodies.

It is to be feared, however, that under either plan the chances of bad government would multiply as the membership of the city council increased, and the responsibility of its individual members decreased.

On the whole, the balance of advantage and safety would seem to lie in a small body elected at large.

A State Commission.—An effective remedy for present evils would be to place the entire city government for a term of three or five years in the hands of a small commission of competent men, to be appointed by the governor.

As has been already shown, the state has from the earliest times, through its own agents and the judiciary, exercised an intimate control over the affairs of towns and cities. These, as political subdivisions of the commonwealth, have no independent political rights of their own, but are in legal contemplation the creatures of the general court, and so far as the management of their local public business goes, can be dealt with as it sees fit.

Such functions of local administration as the state has taken charge of have, also, in the main, been better managed than by the city. This is true of the police, the licensing power, the care of the insane, and the water and sewerage works. These matters have always been administered by the state more economically and effectively than by the city, and, at least in recent years, their management has been free from all connection with party politics.

Boston occupies a peculiar position in the Commonwealth. It embraces one-fifth of the population, and pays over one-third of the state taxes. It is the capital of Massachusetts, the metropolis of New England, a port of entry for a large part of the United States; and whether it is well or ill-governed is a matter of great concern to the state at large.

The inhabitants of a great city, however, should not be disfranchised because they have been unable, under a given form of local government, to administer their affairs honestly and economically. The principle of local self-government is an essential part of the political fabric, and ought not to be abolished, even temporarily, except the necessity be overwhelming. In a democracy complete state control is permissible only as a last resort.

The essential independence of towns and cities, their freedom to grow and govern, is a necessary element of democratic institutions. It is also a source of danger; but unless these institutions are themselves to fail, the ultimate cure for misgovernment must be found in the reaction of the voters themselves when brought face to face with the consequences of ignorance, indifference and corruption. No recourse should be had to state control at least

until self-government under the conditions best suited to the attainment of good government has proved unable to produce it.

The state, however, as the sovereign, owes certain duties to the people of the towns and cities which are its political creations. It should at least provide for the people of each city and town a form of government which will enable them to secure honesty, efficiency and economy in the administration of their affairs.

Without predicting that no occasion will hereafter arise which would justify the temporary abrogation of local self-government in Boston, the commission believes that the needs of the present situation will best be met by revising the present charter in those particulars in which it has been shown to be defective, and by providing for a more effective supervision by the state over the more important municipal functions.

Changes in the Suffrage.—Many persons, believing that the fundamental cause of bad government in this city is the overwhelming preponderance at the polls of the voters who pay no direct taxes upon property, advocate various changes in the electorate designed to give the property owners a larger voice in municipal elections.

The total number of registered voters is about 110,000. Of these 18,500 only, or $16\frac{1}{2}$ per cent., are assessed for a tax upon property. The remaining 91,500 or $83\frac{1}{2}$ per cent. are assessed for a poll tax only, which considerably more than half of them do not pay.

The relative influence of property, as measured by the proportion of voters who are assessed a property tax, is also less now than it was formerly. Prior to the abolition in 1891 of the poll tax as a prerequisite for voting the percentage of registered voters who were assessed a tax on property was about 28 per cent.; it sank at once to 20 per cent.; remained constant at that figure for a few years; and has now fallen to $16\frac{1}{2}$ per cent.

The proportion of property owners is much larger in some of the neighboring communities, being 58 per cent. in Brookline; but the average for the entire district, including Boston, is only 23 per cent. The number of non-resident adult males assessed on property in the city is under 5,000.

It has been suggested that the electorate will be improved by reëstablishing the poll tax as a prerequisite for voting, by bestowing an additional vote upon those possessing certain property or educa-

tional qualifications, by admitting non-resident property owners to the suffrage, or by disfranchising the city employees.

The suggestion has also been made that the effect of misgovernment might be brought home to the voters if taxes on real estate were assessed directly upon the occupier. The plan does not seem to the commission practicable; and judging from the experience of England it is doubtful whether it would be effective.

The commission believes that there should be no change in the qualifications of the electorate, at least until it is demonstrated that the principle of universal suffrage is unable to secure good results from a form of government suited to the conditions under which it operates.

If it be conceded that municipal government under universal suffrage in this country has so far been a failure, it still remains to determine how far this failure is due to the inherent inability of the people to secure good government through universal suffrage, how far to indifference, and how far to particular defects in the form of government under which that principle has been working. Whatever other causes may contribute to this failure, there can be no question that the electoral machinery should be such as will enable the voters to secure the best results of which popular government is capable.

Every form of government has its limitations. Pure democracy as exemplified in the New England town meeting, however well suited to the government of small communities, is impracticable for large ones. So, when a representative form of municipal government is rendered necessary by the size of the community, satisfactory results are not to be expected unless the duties which fall upon the electorate are suited to the changed conditions.

Too much is required of universal suffrage as applied to the administration of large cities. The voter is asked to elect so many officers that it is impossible for him to ascertain the qualifications of the candidates. He is obliged, in the primaries at least, to vote on state and national party lines instead of on municipal issues. His choice is limited, because good citizens are discouraged from taking office by being forced to solicit the nomination of a political party, and by being put to the expense of a double campaign; and because bad citizens are encouraged to seek office by the multiplicity of salaried places and the many opportunities for corruption and waste in the expenditure of public money.

In these and other particulars our present form of city govern-

ment is unsuited to the requirements and limitations of popular government in large cities.

The commission assumes as the foundation of its work that a majority of the people of this city deplore the condition into which the government has fallen; that they prefer good government; and that they will vote for it if they have the chance. In this belief, and in view of the growing public interest in the problems of municipal government the commission is convinced that the principle of universal suffrage should not be condemned until it has been tried under the conditions which experience shows to be necessary for its success. . . .

30. The Charter of the City of Boston, 1909.

This charter embodied the recommendations of the charter commission. It is the most extreme example of the strong mayor plan of government to be found anywhere. Under it the mayor not only appoints all officers of the City of Boston without interference by the council, but he possesses an absolute veto over the acts of that body. Still more important is his exclusive power to initiate appropriations. No appropriations can be passed by the council except upon the mayor's recommendation. The council may decrease or altogether refuse, but cannot increase, the sums recommended. The mayor is, however, checked by the necessity of securing from the Civil Service Commission, which is a state body appointed by the governor, a certification that each of his appointees is competent to perform the duties of the office to which he is about to be appointed. The state also exercises a general supervision over the government of the city through the permanent Finance Commission, which is appointed by the governor and reports annually to the legislature. The charter as presented here is in its present form. As originally adopted, it provided for the election of a council of nine at large. The decision to go back to the ward plan was made by the people at the November election of 1924.

SOURCE—*Acts and Resolves passed by the General Court of Massachusetts, 1909* (Boston, 1909), Chap. 486, as amended by *Acts of 1912*, Chap. 550, and *Acts of 1924*, Chap. 479.

AN ACT RELATING TO THE ADMINISTRATION OF THE CITY OF BOSTON
AND TO AMEND THE CHARTER OF THE SAID CITY.

Be it enacted, etc., as follows:

THE MAYOR AND CITY COUNCIL.

SECTION. 1. The terms of office of the mayor and the members of both branches of the present city council of the city of Boston and of the street commissioner whose term would expire on the first Monday of January, nineteen hundred and ten, are hereby extended to ten o'clock A. M. on the first Monday of February, nineteen hundred and ten, and at that time the said city council and both branches thereof and the positions of city messenger, clerk of the common council, clerk of committees, assistant clerk of committees, and their subordinates shall be abolished. The officials whose terms of office are hereby extended shall, for the extended term, receive a compensation equal to one-twelfth of the annual salaries now paid to them respectively. The mayor and city council elected in accordance with the provisions of this act, and their successors, shall thereafter have all the powers and privileges conferred, and be subject to all the duties and obligations imposed, by law upon the city council or the board of aldermen, acting as such or as county commissioners or in any capacity, except as herein otherwise provided. Wherever in this act the phrase "mayor and city council" appears, it shall be understood as meaning the mayor and city council acting on and after the first Monday in February, nineteen hundred and ten, under the provisions of this and the three following sections. The city council may, subject to the approval of the mayor, from time to time establish such offices, other than that of city clerk, as it may deem necessary for the conduct of its affairs and at such salaries as it may determine, and abolish such offices or alter such salaries; and without such approval may fill the offices thus established and remove the incumbents at pleasure.

SECTION 2. The mayor from time to time may make to the city council in the form of an ordinance or loan order filed with the city clerk such recommendations other than for school purposes as he may deem to be for the welfare of the city. The city council shall consider each ordinance or loan order presented by the mayor and shall either adopt or reject the same within sixty days after

the date when it is filed as aforesaid. If the said ordinance or loan order is not rejected within said sixty days it shall be in force as if adopted by the city council unless previously withdrawn by the mayor. Nothing herein shall prevent the mayor from again presenting an ordinance or loan order which has been rejected or withdrawn. The city council may originate an ordinance or loan order and may reduce or reject any item in any loan and, subject to the approval of the mayor, may amend an ordinance. All sales of land other than school lands, all appropriations for the purchase of land other than for school purposes, and all loans voted by the city council shall require a vote of two thirds of all the members of the city council; and shall be passed only after two separate readings and by two separate votes, the second of said readings and votes to be had not less than fourteen days after the first. No amendment increasing the amount of land to be sold or the amount to be paid for the purchase of land, or the amount of loans, or altering the disposition of purchase money or of the proceeds of loans shall be made at the time of the second reading and vote.

SECTION 3. All appropriations, other than for school purposes, to be met from taxes, revenue, or any source other than loans shall originate with the mayor, who within thirty days after the beginning of the fiscal year shall submit to the city council the annual budget of the current expenses of the city and county, and may submit thereafter supplementary budgets until such time as the tax rate for the year shall have been fixed. The city council may reduce or reject any item, but without the approval of the mayor shall not increase, any item in, nor the total of a budget, nor add any item thereto, nor shall it originate a budget. It shall be the duty of the city and county officials, when requested by the mayor, to submit forthwith in such detail as he may require estimates for the next fiscal year of the expenditures of the department or office under their charge, which estimates shall be transmitted to the city council.

The city auditor may, with the approval in each instance of the mayor, at any time make transfers from the appropriation for current expenses of one division of a department to the appropriation for current expenses of any other division of the same department, and from the reserve fund to any appropriation for the current expenses of a department; and may also, with the approval

of the mayor, at any time between December first and February first,¹ make transfers from any appropriation to any other appropriation: *provided, however*, that no money raised by loan shall be transferred to any appropriation from income or taxes. He may also with such approval apply any of the income and taxes not disposed of in closing the accounts for the financial year in such manner as he may determine.

SECTION 4. Every appropriation, ordinance, order, resolution and vote of the city council, except votes relating to its own internal affairs, shall be presented to the mayor, who shall make or cause to be made a written record of the time and place of presentation, and it shall be in force if he approves the same within fifteen days after it shall have been presented to him, or if the same is not returned by him with his objections thereto in writing within said period of fifteen days. If within said period said appropriation, ordinance, order, resolution, or vote is returned by the mayor to the city council by filing the same with the city clerk with his objections thereto the same shall be void. If the same involves the expenditure of money, the mayor may approve some of the items in whole or in part and disapprove other of the items in whole or in part; and such items or parts of items as he approves shall be in force, and such items or parts of items as he disapproves shall be void.

SECTION 5. Except as otherwise provided in this act, the organization, powers, and duties of the executive departments of the city shall remain as constituted at the time when this section takes effect; but the mayor and city council at any time may by ordinance reorganize, consolidate, or abolish departments in whole or in part; transfer the duties, powers, and appropriations of one department to another in whole or in part; and establish new departments; and may increase, reduce, establish or abolish salaries of heads of departments, or members of boards. Nothing in this act shall authorize the abolition or the taking away of any of the powers or duties as established by law of the assessing department, building department, board of appeal, children's institutions department, election department, fire department, Franklin Foundation, hospital department, library department, overseers of the poor, school-house department, school committee, or any department in charge

¹ These dates were changed to November 15 and January 1, by *Acts of 1924*, Chap. 479, Section 2.

of an official or officials appointed by the governor, nor the abolition of the health department.

SECTION 6. No contract for lighting the public streets, parks, or alleys, or for the collection, removal, or disposal of refuse, extending over a period of more than one year from the date thereof, shall be valid without the approval of the mayor and the city council after a public hearing held by the city council, of which at least seven days' notice shall have been given in the City Record.

SECTION 7. The city council at any time may request from the mayor specific information on any municipal matter within its jurisdiction, and may request his presence to answer written questions relating thereto at a meeting to be held not earlier than one week from the date of the receipt of said questions, in which case the mayor shall personally, or through a head of a department or a member of a board, attend such meeting and publicly answer all such questions. The person so attending shall not be obliged to answer questions relating to any other matter. The mayor at any time may attend and address the city council in person or through the head of a department, or a member of a board, upon such subject as he may desire. . . .¹

THE EXECUTIVE DEPARTMENT.

SECTION 9. All heads of departments and members of municipal boards, including the board of street commissioners, as their present terms of office expire (but excluding the school committee and those officials by law appointed by the governor), shall be appointed by the mayor without confirmation by the city council. They shall be recognized experts in such work as may devolve upon the incumbents of said offices, or persons specially fitted by education, training or experience to perform the same, and (except the election commissioners, who shall remain subject to the provisions of existing laws) shall be appointed without regard to party affiliation or to residence at the time of appointment except as hereinafter provided. . . .²

SECTION 11. The civil service commission is authorized to incur

¹Section 8 provides that members of the city government are not to be interested in contracts made by the city or county.

²An appointee accused of crime or dishonesty must, if he wishes, be given a hearing, at which he has an opportunity to explain or refute the charge, *Acts of 1912*, Chap. 550.

The competence of the appointees must be certified to by the civil service commission before the mayor's appointments become effective.

in carrying out the foregoing provisions such reasonable expense as may be approved by the governor and council; the same to be paid by the commonwealth, which upon demand shall be reimbursed by the city of Boston.

SECTION 12. A vacancy in any office to which the provisions of section nine of this act apply, shall be filled by the mayor under the provisions of said section and pending a permanent appointment he shall designate some other head of a department or member of a board to discharge the duties of the office temporarily.

SECTION 13. Members of boards shall be appointed for the terms established by law or by ordinance. Heads of departments shall be appointed for terms of four years beginning with the first day of May of the year in which they are appointed and shall continue thereafter to hold office during the pleasure of the mayor.

SECTION 14. The mayor may remove any head of a department or member of a board (other than the election commissioners, who shall remain subject to the provisions of existing laws) by filing a written statement with the city clerk setting forth in detail the specific reasons for such removal, a copy of which shall be delivered or mailed to the person thus removed, who may make a reply in writing, which, if he desires, may be filed with the city clerk; but such reply shall not affect the action taken unless the mayor so determines. The provisions of this section shall not apply to the school committee or to any official by law appointed by the governor.

SECTION 15. The positions of assistants and secretary authorized by section twenty of chapter four hundred and forty-nine of the acts of the year eighteen hundred and ninety-five except those in the election department are hereby abolished, and except as aforesaid the said section is hereby repealed.

The civil service laws shall not apply to the appointment of the mayor's secretaries, nor of the stenographers, clerks, telephone operators and messengers connected with his office, and the mayor may remove such appointees without a hearing and without making a statement of the cause for their removal.

SECTION 16. No official of said city, except in case of extreme emergency involving the health or safety of the people or their property, shall expend intentionally in any fiscal year any sum in excess of the appropriations duly made in accordance with law, nor involve the city in any contract for the future payment of money in excess of such appropriation, except as provided in section six of this act. Any official who shall violate the provisions

of this section shall be punished by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or both. . . .¹

SECTION 28. The jurisdiction now exercised by the board of aldermen concerning the naming of streets, the planting and removal of trees in the public ways, the issue of permits or licenses for coasting, the storage of gasoline, oil, and other inflammable substances or explosive compounds and the use of the public ways for any permanent or temporary obstruction or projection in, under, or over the same, including the location of conduits, poles, and posts for telephone, telegraphy, street railway, or illuminating purposes, is hereby vested in the board of street commissioners, to be exercised by said board with the approval in writing of the mayor; and the mayor and city council shall have authority to fix by ordinance the terms by way of cash payment, rent, or otherwise, upon which permits or licenses for the storage of gasoline or oil, or other inflammable substances or explosive compounds, and the construction or use of coal holes, vaults, bay windows, and mar- quises, in, under, or over the public ways shall be issued.

SECTION 29. Within ninety days after the passage of this act and thereafter there shall be published at least once a week and distributed and sold under the direction of the mayor and on terms to be fixed by the city council and approved by the mayor a paper to be known as the "City Record." All advertising, whether required by law or not, with reference to the purchase or taking of land, contracts for work, materials, or supplies, the sale of bonds, or the sale of property for non-payment of taxes shall appear exclusively in said paper; a list of all contracts of one thousand dollars or more, as awarded, with the names of bidders, and the amount of the bids; appointments by the mayor; and changes in the number and compensation of employees in each department, shall be published in the City Record. The proceedings of the city council and school committee together with all communications from the mayor, shall be published in the City Record. . . .

SECTION 32.² Beginning in the year nineteen hundred and twenty-five, the municipal election in said city shall take place biennially in every odd numbered year on the Tuesday after the first Monday in November. . . .

¹ Sections 17-21, creating the Finance Commission, will be under § 58.

² As amended by *Acts* of 1924, Chap. 479.

SECTION 45.¹ Beginning with the biennial municipal election in the year nineteen hundred and twenty-five, the mayor of the city of Boston shall be elected at large to hold office for the term of four years from the first Monday in January following his election and until his successor is chosen and qualified and shall not be eligible for election for the succeeding term. . . .²

SECTION 47.³ If a vacancy occurs in the office of mayor within two months prior to a regular municipal election other than an election for mayor, or within sixteen months after any regular municipal election, the city council shall forthwith order a special election of mayor to serve for the unexpired term, and if such vacancy occurs at any other time there shall be an election for mayor at the next regular municipal election for the term of four years; provided, that the foregoing provisions shall not apply if such vacancy occurs between the date of an election at which a new mayor is elected and the date he takes office. In the case of the decease, inability, absence or resignation of the mayor, and whenever there is a vacancy in the office from any cause, the president of the city council while said cause continues or until a mayor is elected shall perform the duties of mayor. If he is also absent or unable from any cause to perform the duties of mayor, they shall be performed until the mayor or president of the city council returns or is able to attend to said duties by such member of the city council as that body may elect, and until such election by the city clerk. The person upon whom such duties shall devolve shall be called "acting mayor" and he shall possess the powers of mayor only in matters not admitting of delay, but shall have no power to make permanent appointments except on the decease of the mayor.

SECTION 48.⁴ Beginning with the biennial municipal election in the year nineteen hundred and twenty-five, there shall be elected at each regular municipal election by and from the registered voters of each ward one councillor to serve for two years from the first Monday in January following his election and until his successor is elected and qualified.

SECTION 49. Each member of the city council shall be paid an annual salary of fifteen hundred dollars; and no other sum shall be paid from the city treasury for or on account of any personal

¹ As amended by *Acts* of 1924, Chap. 479.

² Section 46, permitting the recall of the mayor after two years was repealed in 1918.

³ As amended by *Acts* of 1924, Chap. 479.

⁴ *Ibid.*

expenses directly or indirectly incurred by or in behalf of any member of said council.

SECTION 50.¹ The city council shall be the judge of the election and qualifications of its members; shall elect from its members by a vote of a majority of all the members a president who when present shall preside at the meetings thereof; shall from time to time establish rules for its proceedings, and shall, when a vacancy occurs in the office of any member during the first eighteen months of his term, order a special election in his ward to fill such vacancy for the unexpired term. The member eldest in years shall preside until the president is chosen, and in case of the absence of the president, until a presiding officer is chosen.

SECTION 51. All elections by the city council under any provision of law shall be made by a viva voce vote, each member who is present answering to his name when it is called by the clerk or other proper officer, and stating the name of the person for whom he votes, or declining to vote as the case may be; and the clerk or other proper officer shall record every such vote. No such election shall be valid unless it is made as aforesaid. . . .²

31. A Veto Message.

This is a veto message of the mayor of Bridgeport, Connecticut, selected because of its brevity. It will be noted that it satisfies the customary requirement that the mayor shall state the reasons for a veto.

SOURCE—Bridgeport, Conn., *Municipal Register*, 1924 (Bridgeport, 1924), 39.

VETO BY HON. F. WILLIAM BEHRENS, MAYOR, OF ACTION RELATIVE TO STREET REPAIRS, JUNE 2, 1924.

*To the Honorable Common Council of the City of Bridgeport.
Gentlemen:*

I herewith return, without approval, the resolution adopted by your honorable body at a meeting held May 5th, 1924, relative to an expression of the view of the common council concerning

¹As amended by *Acts of 1924*, Chap. 479.

²Sections 52-62, dealing with the election of officers under this charter, will be found as § 79.

the petition of Silliman and Godfrey for permission to repair city streets, with sheet asphalt or Topeka mixture, where openings have been made by Public Service Corporations for the following reasons:

On May 3d, 1924, the Director of Public Works asked for bids to repair the streets of our city and the contract was awarded to Warren Brothers, who were the lowest bidders. In my opinion the City cannot enter into similar contracts with two different concerns for the same work, without involving itself in litigation.

I therefore feel compelled to withhold my approval of said resolution.

Respectfully submitted this 2d day of June, 1924.

F. WILLIAM BEHRENS,

Mayor.

PART IV

THE WEAK MAYOR PLAN OF GOVERNMENT

32. Charter of the City of Ann Arbor, Michigan, 1923.

This charter belongs to what is known as the weak mayor type of city government. In it the center of authority rests with the council. Governments of this type are at present established in considerably more than half of the cities of the United States. They differ, of course, from this Ann Arbor charter in numerous respects, but it is an excellent example of a kind of governmental organization which is very common in cities of moderate size. Ann Arbor had a population at the 1920 census of 19,516. Its charter was originally derived from the legislature of the state of Michigan by special act, but has been frequently amended under the home rule provisions of the Michigan constitution.

SOURCE—*Charter of the City of Ann Arbor* (Published by the city, 1923).

Incorporation and Boundaries

• • • •
SEC. 2. The city shall be divided into seven wards, as follows: . . .

Electors and Registration

• • • •

Elections

SEC. 12. An annual city charter election shall be held on the first Monday in April in each year, at such place in each of the several wards of the city as the common council shall designate.

SEC. 13. Special elections may be appointed by resolution of the common council, to be held in and for the city, or in and for

any ward thereof, at such time and place, or places, as the common council shall designate; the purpose and object of which shall be fully set forth in the resolution appointing such election. . . .

Officers

SEC. 30. The following city officers, viz: A mayor, president of the common council, city clerk, two justices of the peace and an assessor shall be elected by the qualified voters of the whole city, and a supervisor, two aldermen and a constable shall be elected in each ward.

SEC. 31. The following officers shall be appointed by the mayor, subject to the approval of a majority of the members-elect from the common council, viz: A city treasurer, a city attorney, members of the board of public works, members of the board of fire commissioners and members of the board of health. The common council may also, from time to time provide by ordinance for the appointment, and appoint for such term as may be provided in any such ordinance, such other officers whose election or appointment is not herein specially provided for, as the common council shall deem necessary for the execution of the powers granted by this act, and may remove the same at pleasure. The powers and duties of all such officers shall be prescribed by ordinance.

SEC. 32. Appointments to office by the mayor, except appointments to fill vacancies, shall, unless otherwise provided, be made on the first Monday in May in each year; but appointments which for any cause shall not be made on this day may be made at any subsequent regular meeting of the common council.

SEC. 33. The mayor, president of the common council, city clerk, assessor and aldermen shall hold their offices for the term of two years from the second Monday in April in the year when elected, and until their successors are elected and qualified: *Provided*, That in said seventh ward created by this act, there shall be elected at the first charter election held after the passage of this act, two aldermen, one for the term of one year and one for the term of two years from the second Monday in April of the year when elected, and until their successors are elected and qualified. The term of each shall be designated by the ballots cast for him, and each year thereafter one alderman shall be elected in said ward.

SEC. 34. The supervisors and constable shall hold their offices for the term of one year from the second Monday in April of the

year when elected, and until their successors qualify and enter upon the duties of their offices. The justices of the peace shall be elected for the term of four years from the fourth day of July next after their election, one to be elected each alternate year.

SEC. 35. All other officers, except as hereinafter provided, appointed by the mayor and common council or boards of the city, except officers appointed to fill vacancies in elective offices, shall hold their respective offices until the first Monday in May next after such appointment and until their successors are qualified and enter upon the duties of their office, unless a different term of office shall be provided in this act or by an ordinance duly enacted.

Qualifications, Oath, Official Bond

SEC. 36. No person shall be elected or appointed to any office, unless he be an elector of said city, and if elected or appointed for a ward, he must be an elector thereof; and no person shall be elected or appointed to any office in the city who has been or is a defaulter to the city or any board of officers thereof, or to any school district, county or other municipal corporation of the state. All votes for, or any appointment of, any such defaulter shall be void.

. . . .

Vacancies in Office

. . . .

Duties of Officers—The Mayor

SEC. 46. The mayor shall be the chief executive officer of the city, and shall from time to time give to the common council information, in writing concerning the affairs of the corporation, and recommend such measures as he may deem expedient. It shall be his duty to exercise supervision over the several departments of the city government, and to see that the laws relating to the city and the ordinances and regulations of the common council are enforced.

SEC. 47. The mayor shall be a conservator of the peace, and may exercise within the city the powers conferred upon sheriffs to suppress disorder, and shall have authority to command the assistance of all able-bodied citizens to aid in the enforcement of the city ordinances or laws of the state, and to suppress riot and disorderly conduct.

SEC. 48. The mayor shall have authority at all times to examine

and inspect the books, records and papers of any agent, employee or officer of the city, and shall perform generally all such duties as are or may be prescribed by the ordinances of the city.

SEC. 49. In the absence or disability of the mayor, or in case of any vacancy in his office, the president of the common council shall perform the duties of the mayor.

Aldermen

SEC. 50. The aldermen of the city shall be members of the city council, attend all the meetings thereof, and act upon committees when thereunto appointed by the president of the council. As conservators of the peace they shall aid in maintaining quiet and good order in the city, and in securing the faithful performance of duty by all officers of the city.

City Clerk

SEC. 51. The City Clerk shall keep the corporate seal and all the documents, official bonds, papers, files and records of the city, not by this act or by the ordinances of the city, entrusted to some other officer; he shall be clerk of the Common Council, shall attend its meetings, record all its proceedings, ordinances and resolutions, and shall countersign and register all licenses granted and report the same with the amount thereof to the Common Council monthly; he shall, when required, make and certify, under seal of the city, copies of the papers and records filed and kept in his office, and such copies shall be evidence in all places of the matters therein contained to the same extent as the original would be. He shall possess and exercise the powers and duties of township clerk so far as the same are required to be performed within the city, and shall have authority to administer oaths and affirmations. The City Clerk may, subject to the approval of the Common Council, appoint a deputy and such deputy may perform any and all the duties of such clerk.

SEC. 52. The city clerk shall, in addition to his duties as clerk, exercise the powers and functions of a city comptroller. He shall sign all cemetery deeds and orders upon the treasury. He shall countersign all bonds and all evidences of debt and transfer of property which the common council is authorized to make, pledging the faith of said city. He shall receive all accounts and demands against the city, shall examine them in detail, audit or allow them

or such part thereof as to the correctness of which he has no doubt and which the claimant is willing to accept in full discharge thereof, file and number them as vouchers with the date thereof, and report his findings to the finance committee of the common council, who shall review such report and transmit the same to the common council with its recommendation as to the allowance or disallowance of such claims or any of them, and no claim so audited shall be binding against the city until approved by a vote of the common council, and when such claim is allowed by the common council, the city clerk shall draw his warrant upon the city treasurer for the payment thereof, designating thereon the fund from which the payment is to be made, but no warrant shall be drawn on any fund after the same has been exhausted and any warrant so drawn shall be void. When any tax or money shall be levied, raised or appropriated, he shall report the amount thereof to the city treasurer, stating the object and fund for which it is levied, raised or appropriated and the amount thereof to be credited to each fund. The city clerk shall sign all contracts and agreements on behalf of the city except as otherwise in this act provided and subject to the orders of the common council. He shall make all purchases of materials, tools, books, stationery, apparatus and property for the city or its officers not otherwise provided herein or ordered by the common council. He shall keep a record of all officers and employes of the city and certify to the pay rolls and wages of all such officers and persons to the common council. He shall be charged, under the supervision of the common council, with the leasing, repairs, insurance and general supervision of the property of the city, and for his information may require reports from all officers and persons having any city property in charge or possession or having supervision of city employes, and make report of the same when required by the common council. He shall keep a complete set of books exhibiting the condition of the city in its various departments and funds, its resources and liabilities, with proper classification thereof of each fund or appropriation for any distinct object of expenditure or class of expenditures. Whenever any such fund or appropriation has been exhausted by warrants already drawn thereon or by appropriations, liabilities, debts or expenses actually incurred or contracted for, no further warrants shall be drawn by the city clerk against such fund or appropriation until another appropriation shall be made. Whenever any appropriation is made from any fund in excess of the balance remaining in such fund

after previous appropriations have been deducted therefrom and after the fixed salaries or charges thereon to be paid from said fund are deducted therefrom, he shall notify the official or officials charged with the expenditure of such appropriation of the amount of money available for such appropriation or of the fact that no money remains in the fund available for the appropriation, and after such notification no expenditures shall be made under such appropriation in excess of the amount so reported by the city clerk as available. The city clerk shall report in writing to the common council at its first meeting thereafter the reasons for such notification together with such recommendations as he sees fit. The council may provide funds for the appropriation if it sees fit, in any manner permitted by the charter or by cutting down any unexpended appropriation and returning the same to the credit of the fund from which it is drawn. If the comptroller shall attempt to cut down or render nugatory any appropriation which does not violate any provision of the charter, he may be mandamusd by order of the council on application to the circuit court. He shall, when required, or when he sees fit, make report to the council as to the liabilities and resources of the city with estimates of funds needed for current expenses and recommendations relating thereto, and he shall make an annual report showing in detail the financial transactions of the city for the fiscal year.

SEC. 53. The city clerk shall keep himself thoroughly acquainted, and make himself conversant with the doings of all officers charged in any manner with the receipt, collection and disbursement of the city revenues, and shall have general supervision over all the property and assets of the city; he shall have charge of all books, vouchers and documents relating to the accounts, contracts, debts and revenues of the corporation; he shall countersign and register all bonds issued, and keep a list of all property and effects belonging to the city, and of all its debts and liabilities; he shall keep a complete set of books, exhibiting the financial condition of the corporation in all its departments, funds, resources and liabilities, with a proper classification thereof, and showing the purpose for which each fund was raised; he shall also keep an account with the treasurer, in which he shall charge him with all moneys received for each of the several funds of the city, and credit him with all the warrants drawn thereon, keeping a separate account with each fund; when any fund has been exhausted, he shall immediately advise the common council thereof;

the city clerk shall be the clerk of the board of public works and all other boards, the clerk of all standing and special committees of the common council, and the clerk of all the boards of the city that may from this time be established. He shall render to the common council on the first Monday of every month, and oftener if required, a report of the amount of all orders drawn since the last preceding report, what orders remain outstanding and unpaid, and the balance remaining of the credit of each fund.

SEC. 54. The city clerk shall report to the common council whenever required a detailed statement of the receipts, expenditures and financial condition of the city, of the debts to be paid and moneys required to meet the estimated expenses of the corporation, and shall perform such other duties pertaining to his office as the common council may require. The clerk shall be the sealer of weights and measures for the said city and shall perform all the duties of township clerk relative thereto.

SEC. 55. The common council shall provide and fit up an office for the city clerk, and establish office hours during which said clerk shall be required to be at his office.

Justices of the Peace

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The Assessor

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Supervisors

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Constables

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SEC. 61.¹ There shall be a Board of Police Commissioners in said city which shall consist of three good and competent men who are electors therein. They shall be appointed by the Mayor, subject to the approval of the majority of all the aldermen elect. The full term of a member shall be three years, but the members first appointed shall be subject to classification in such a manner that one term shall expire in each year. The said Commission shall

¹ As amended April 2, 1923.

make a monthly report of the work of the Commission to the Common Council, which shall contain a detailed statement of the arrests, the amount of the fines and costs collected and such other information as the Common Council shall prescribe. Any member of the commission may be removed by a three-fourths vote of the members-elect of the Common Council for malfeasance of duties of the office or for any other cause wherein elective or appointive officers may be removed under the terms of this charter or state law, for failure to perform their duties. The members of the said Board of Police Commissioners shall receive such compensation as the Common Council may allow.

The Board of Police Commissioners shall have and possess all the powers given by the charter and ordinances of the city and other governmental laws, to establish and enforce such police regulations as they shall deem necessary to prevent vice and immorality, to preserve public peace and good order, to prevent and quell riots and disturbances and disorderly assemblages, to prevent the violation of the Sabbath and disturbances of any religious congregations or any other public meetings assembled for any lawful purpose and shall possess such other powers as shall be incident to the public welfare and usually conferred upon such commissions.

The Board of Police Commissioners shall appoint a City Marshal as Chief of Police of the city, who shall be subject to the direction of the said Board of Police Commissioners. . . .

SEC. 62.¹ The Chief of Police shall report, in writing and on oath, to the Board of Police Commissioners at their first meeting in each month, all arrests made by him and the cause thereof, and all persons discharged from arrest during the month; also, the number remaining in confinement for breaches of the ordinances of the city; and the amount of all fines and fees collected by him. All money collected or received by the chief of police, for fines, fees or for any services performed by him in any official capacity, unless otherwise directed by this act, shall be paid into the city treasury during the same month when received, and the treasurer's receipt therefor shall be filed with the city clerk.

SEC. 63.² The Chief of Police shall not leave the city without the consent of the Board of Police Commissioners, except in pursuit of fugitives from justice or for the arrest of persons charged with a violation of the city ordinances. In the absence of the Chief of

¹ As amended April 2, 1923.

² As amended April 2, 1923.

Police or his inability to serve, the Board of Police Commissioners may designate any policeman or officer to perform his duties.

City Treasurer

SEC. 64. The city treasurer shall have the custody of all moneys, bonds, mortgages, notes and evidences of value belonging to the city. He shall receive all moneys belonging to and receivable by the corporation, and keep an account of all receipts and expenditures thereof. He shall pay no money out of the treasury except in pursuance of and by the authority of law, and upon warrant signed by the city clerk and countersigned by the mayor, or for school purposes by the proper officers, which shall specify the purpose for which the amounts thereof are to be paid. . . .

City Attorney

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Compensation of Officers

SEC. 69. The officers and employees of said corporation shall be entitled to receive out of the city treasury such compensation as the Common Council shall allow. . . .

The Common Council

SEC. 70. The legislative authority of the said City of Ann Arbor shall be vested in a common council, consisting of the president of said council and two aldermen elected from each ward.

SEC. 71. The president of the Common Council shall attend and preside at all meetings thereof and shall have a vote on all questions. He shall be ex-officio a member of all committees of the Common Council. He shall have the appointment of all standing and special committees of the Council, unless otherwise ordered when such special committee is constituted. He shall have the power and it shall be his duty to preserve order and decorum in the council room during the sessions of the council, and in the discharge of such duty may order any disorderly person removed from the council room, and for a second violation of the order by the same person at a single session of the council, the president may order his arrest and imprisonment for a period not exceeding twenty-four hours. In the absence or disability of the president the

council shall appoint one of their number to perform his duties, and for the time being shall exercise the powers and discharge the duties of the president.

SEC. 72. The city clerk shall be clerk of the common council, but shall have no vote therein. He shall keep a full record of all the proceedings of the common council, and perform such other duties relating to his office as the common council may direct. In the absence of the clerk or his deputy from any session of the common council the common council shall appoint one of their number to act as clerk during said session. . . .

SEC. 74. All meetings and sessions of the council shall be in public. A majority of the members elect shall make a quorum for the transaction of business; a less number may adjourn from time to time, and may compel the attendance of absent members in such manner as may be prescribed by ordinance; but no office shall be created or abolished, nor any tax or assessment be imposed, street, alley or public ground be vacated, real estate or any interest therein sold or disposed of, or private property be taken for public use, unless by a concurring vote of two thirds of all the members elect; nor shall any vote of the council be reconsidered or rescinded at a special meeting, unless there be present as many members as were present when such vote was taken. No money shall be appropriated except by ordinance or resolution of the council; nor shall any resolution be passed or adopted except by vote of the majority of all the members elect, except as herein otherwise provided.

. . . .

SEC. 77. The city attorney, city marshal and street commissioner shall attend all meetings of the council, and the council may require the attendance of any other city official at any session thereof.

. . . .

SEC. 80. The council may provide for the appointment of standing committees of its members, who shall perform such duties, investigate, have charge of, and report upon such matters as may be properly referred to them.

. . . .

SEC. 83.¹ The Chief of Police or any policeman or other officer appointed to office by the Board of Police Commissioners, may be suspended or removed by the said Board of Police Commissioners. Any person so suspended or removed shall have the right to a

¹ As amended April 2, 1923.

hearing before the said Board of Police Commissioners at a regular meeting of said board, provided that application therefore shall be made within ten days after said suspension or removal by the person so suspended or removed; and the said Board of Police Commissioners shall present to the Common Council at its next regular meeting, reasons for the suspension or removal, in writing, which shall become a part of the records of such meeting.

Any officer appointed by the Mayor may be suspended or removed by him, by and with the consent of the majority of the members elect of the council, and the council may expel any alderman or remove from office any person elected thereto, except justices of the peace, by a concurring vote of two-thirds of all the aldermen elect. In case of elective officers, provision shall be made by ordinance for preferring charges and trying the same, and no removal of any elective officer shall be made unless a charge in writing is preferred, and opportunity given him to make defense thereto.

. . . .

SEC. 86. The council shall audit and allow all accounts chargeable against the city, but no claim not certified to by the city official ordering the work done or the purchase made shall be received for audit or allowance, unless it shall be accompanied by an affidavit of the person presenting it that the services therein charged for have been actually performed, or the goods delivered to the city, that the sums charged are reasonable and just, and that to the best of his knowledge and belief no set-off exists, nor payment has been made on account thereof, except such as are endorsed or referred to in such account or claim. And every such account shall exhibit in detail all the items making up the amount claimed and the true date of each: *Provided*, That the claims of members of the board of registration, inspectors and clerks of election, and members of the board of review may be allowed on the certificate of the city clerk.

SEC. 87. Within twenty-four hours after any session of the common council, the clerk of said council shall present the proceedings of such session to the mayor, or other person performing the duties of mayor, for his approval, and he may approve the same in whole or in part, or may refuse to approve any order, resolution, paragraph or clause of said proceedings, creating any office, appropriating any money, ordering any tax or assessment, transferring any money from one fund to another, or allowing any

claim. He shall return his disapproval and reasons therefor, in writing, to the clerk of the council within three days, and no provision or order so disapproved shall be of any effect unless repassed by two-thirds vote of the members elect of said council, within thirty days from the time such disapproval is filed with the clerk: *Provided*, That a unanimous vote of all the members elect shall be necessary to re-pass any disapproved resolution or order for the transfer of any money from one fund to another.

General Power of the Common Council.

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Ordinances

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Enforcement of Ordinances

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Police

SEC. 107.¹ The Common Council of the said city may provide for the appointment by the Board of Police Commissioners for such numbers of policemen or employees as they may deem necessary for the good government of the city, and for the protection of the persons and property of the inhabitants; and may authorize the Board of Police Commissioners to appoint special policemen from time to time when, in the judgment of the Board of Police Commissioners, the emergency or necessity may so require, and may provide for and appoint subordinate officers for police and night watchmen.

SEC. 108.¹ The Board of Police Commissioners may make and establish rules for the regulation and government of the police, prescribing and defining the powers and duties of policemen and employees, and shall prescribe and enforce such police regulations as will most effectually preserve the peace and order of the city, preserve the inhabitants from personal violence, and protect public and private property from destruction by fire and unlawful depredation. And the Board of Police Commissioners may, whenever it shall deem it necessary for the preservation of peace and good order in the city, appoint and place on duty such number of

¹ As amended April 2, 1923.

temporary policemen as in its judgment the emergencies of the case may require; but such appointments, unless made in accordance with some ordinance or resolution of the Common Council, shall not continue longer than five days. . . .

Cemeteries

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Pounds

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Public Buildings, Grounds and Parks

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SEC. 118a. All real estate now owned by the City of Ann Arbor and dedicated to park purposes, including all properties, buildings and improvements of every kind connected therewith, together with all property that may hereafter be acquired for park purposes, and all lawn extensions and shade trees, shall be under the exclusive control of five commissioners who shall be electors and actual residents of the said city and shall be known and designated as "The Board of Park Commissioners of the City of Ann Arbor."

SEC. 118b. The members of said board shall be appointed by the mayor of said city on the first Monday of May of each year, or within a reasonable time thereafter, and in accordance with the provisions of section thirty-one of the charter of said city, relative to appointments by the mayor; the full term of each member shall be five years, from the first Monday in May of the year in which he may be appointed and until his successor is appointed and qualified, except as hereinafter specially provided. Whenever the term of office of any member shall expire, his successor shall be appointed by the mayor, as herein provided and his term of office shall date from the expiration of the term of office of the member whom he succeeds. The members of the said board shall devote all the time necessary to a proper discharge of the duties of their offices, and shall serve without pay. At the first meeting of the said board after the first Monday in May of each year the member whose term of office shall soonest expire shall be president of the board for that year.

. . . .

SEC. 118g. Said board shall have power to engage or appoint all employees on the parks and fix their compensation. It shall have power to appoint a superintendent of parks, who shall not be a member of said board, and fix his salary. Such superintendent shall hold this position during the pleasure of said board.

SEC. 118h. Said board shall have exclusive control over all improvements in any of the said parks; also the construction of all buildings and the maintenance thereof within said parks, and the care and trimming of all shade trees within the said city.

SEC. 118i. The said board may make all needful rules and regulations for the management, maintenance and care of parks and regulate their use; and the common council of said city may provide ordinances for the observation of the same; and may also, in like manner, provide for the observation and enforcement of any other rules and regulations duly made by the said board, under any provisions of this act; and said common council may by ordinance provide for the preservation and protection of the parks and any of the property in charge of said board against any destruction or injury and prevent the destruction or injury to, or taking of any trees, shrubs, plants, flowers, or other things set out, planted or used by the said board in benefiting, improving or ornamenting the said parks and prevent any disorder or disturbance on or about said parks or any encroachment thereon or any interference with the quiet and peaceful use and enjoyment of the same, for the purposes for which the same are established and maintained. The said ordinances may provide for the punishment of any breach or violation of any of their provisions by like penalty provided for violations of ordinances of the said city.

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Sewers, Drains and Water-Courses

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Streets, Sidewalks and Public Improvements

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Board of Public Works

SEC. 134. There shall be a board of public works, consisting of seven good and competent men who are electors, no two of whom

shall be residents of the same ward. The members of such board shall be appointed by the mayor, subject to the approval of a majority of the members elect of the common council, and shall hold office for the term of five years and until their successors are appointed and qualify, the said term to commence on the fifteenth day of May: *Provided*, That the three members of said board now in office shall continue in office for the term for which they were appointed, and until the members of said board provided for by this act shall have been appointed, qualified and shall enter upon their duties as members of said board.

. . . .

SEC. 136. Said board of public works shall after the said public improvements have been first duly ordered by the common council, have supervision and charge of the construction and repair of all sidewalks, cellars under sidewalks, culverts, bridges, platforms, fountains and reservoirs; the construction, repair and extension of all main and lateral sewers and drains; the erection, alteration and repair of all engine houses, police stations, city halls and other public buildings of every description in said city, except school houses and buildings for water works; the deepening and cleaning of ditches and gutters; the cleaning, repairing, grading, planking, graveling or covering with other material of all streets and alleys; and shall, in addition thereto, exercise such other power and perform such other duties in the superintendence, construction and care of public works and improvements as the common council may from time to time by ordinance direct. Said board of public works may recommend a change of grades for streets, alleys, lanes and sidewalks to the common council, but shall make no change in the established grades of any streets, alleys, lanes, gutters or sidewalks of the city without the consent of the common council, made in pursuance of an ordinance of the city establishing all such grades. All plats or additions to the city shall be first submitted to the board of public works for its approval before the same are recorded.

SEC. 137. Whenever the common council of said city shall have decided upon the making of any public improvement, it shall so declare by resolution and shall refer the matter to the board of public works and such board or boards as may be interested therein and said board or boards, with all convenient dispatch shall determine as to the particular kind of materials to be used therefor so far as practicable and estimate in detail the quantity of ma-

terials, the probable cost and expense of such work and of the materials, and make a record thereof in their office, and cause to be prepared, so far as necessary, plans and specifications for such work or improvement, and report the determination and estimate to the common council. When such plans and specifications have been submitted to the common council, and approved by it, the said board of public works shall, except in the case of cleaning the ditches and gutters and the repair of streets, and sidewalks, advertise for proposals for furnishing of material and for the performance of such work; and may require all bidders to furnish security for the performance of any contract awarded to them; and all bids submitted to said board shall be publicly opened by it, and, as soon thereafter as may be, reported by the said board to the common council together with its recommendation in respect thereto; and no contract shall be let by the said board until duly authorized by the common council; said board shall have the right to reject any and all bids made, and in case all bids are rejected, or no bids received, the board may then advertise a second time or perform such work and furnish the materials itself. And if the board shall decide to perform such work and furnish the materials, it shall be the duty of the board to communicate in writing to the common council, at its earliest opportunity, its determination so to do; and after the completion of such work, at its earliest opportunity, the board shall make an itemized report in writing to the common council of all money expended by it in the prosecution of such work and the purchase of such materials, stating therein for what particular purpose said money was expended. No expenditures for any purpose exceeding twenty-five dollars shall be paid by the said board except by consent of the common council.

. . . .

SEC. 139. Said board shall have the power to appoint, subject to the approval of the common council, a city engineer, who shall hold office during the pleasure of the said board, shall make all surveys required for the laying out, construction, alteration, repair and improvement of streets, sewers, water-mains, cemeteries, parks, public grounds and buildings, and prepare all necessary plans, profiles and specifications therefor, and perform the civil engineering work of said city of every description, as required by the common council, the said board of public works, or any other lawful authority of said city. Said engineer may, subject to the approval of the board of public works, appoint such assistants under him as

are required for the proper and prompt performance of his duties, and discharge such assistants at pleasure. Said board shall also have the power to appoint suitable persons who shall have personal supervision of the construction and repair of public buildings; and the said board shall appoint a street commissioner, who shall have charge of the grading, paving, improving, cleaning and care of the streets, sidewalks, alleys and public grounds, the construction of sidewalks, and the cleaning and deepening [of] the ditches, drains and gutters, under the direction of said board of public works, who may remove the said street commissioner at pleasure, and may appoint such other subordinates as may be necessary to enable the board to properly perform the duties devolving upon it. Said board shall determine the compensation of said engineer and other appointees of said board, subject to a change by a majority vote of all the members elect of the common council; and all other claims for the same, when certified by the board, shall be submitted to the common council for allowance and payment, in the same manner as other claims against the city.

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Fire Department

SEC. 145. There shall be a board of fire commissioners in said city. It shall consist of three good and competent men who are electors therein. They shall be appointed by the mayor, subject to the approval of the majority of all the aldermen elect. The full term of a member shall be three years, but the members shall be subject to classification in such a manner that one term shall expire in each year. They shall serve without compensation.

SEC. 146. The board of fire commissioners shall have power, subject to the charter and ordinances of said city, to establish and enforce such regulations as they shall deem necessary to guard against the occurrence of fires, and to protect the property and the persons of the citizens against damage and accident resulting therefrom; and for this purpose to establish and maintain a fire department; and said council is hereby required to make such ordinances as are required therefor. The board of fire commissioners shall have power to organize and maintain fire companies, to employ and appoint firemen, and to make and establish rules and regulations for the government of the department, the employees, firemen, and officers thereof; and for the care and management of the engines, apparatus, property, and buildings pertaining to the

department; and prescribing the powers and duties of such employes, firemen and officers.

SEC. 147. The board of fire commissioners shall nominate and with the consent of the common council shall appoint a chief of the fire department. The city clerk shall be secretary of said board.

. . . .

The Public Health

SEC. 161. There shall be a board of health in said city which shall consist of three members, one of whom shall be a competent physician; they shall be appointed by the Mayor, by and with the consent of the common council, for the full term of three years; but the members shall be subject to classification in such manner that one term shall expire each year; one of the members of said board, in addition to the powers and duties incumbent upon him as a member of said board, shall be city health officer and shall exercise such powers and duties as shall be from time to time conferred upon him by said board of health and the common council of said city. Said city health officer shall in all cases be a competent physician and the mayor shall designate which of the members of said board shall be city health officer, and such member of the board of health shall continue to discharge the duties of city health officer during the term for which he was appointed as a member of said board. Such city health officer shall be the executive officer of the board of health, shall perform such duties of inspection as may be necessary for the information and guidance of said board and shall do the work of fumigating in all cases where it is necessary for it to be done within said city. The members of the said board of health shall receive such compensation as the common council may allow. . . .

Finance and Taxation

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33. The System of Government for Boroughs in Pennsylvania, 1915.

The Pennsylvania statute providing for the government of boroughs presents some interesting contrasts with the previous extract. The existing provisions for the govern-

ment of boroughs should be carefully compared with the borough charter of Huntingdon, Pennsylvania (§ 9 above).

SOURCE—*Laws of the General Assembly of the Commonwealth of Pennsylvania, 1915* (Harrisburg, 1915), No. 192.

AN ACT providing a system of government for boroughs, and revising, amending, and consolidating the laws relating to boroughs.

CHAPTER VII.

GOVERNMENT.

ARTICLE I.

COUNCIL.

Section 1. The borough council shall organize at eight o'clock post meridian on the first Monday of January, one thousand nine hundred and sixteen, and biennially thereafter, by electing a president and secretary and such other officers as it may require. The president shall preside over the meetings of council, and when absent his place shall be filled by a president pro tempore. The councilmen shall not receive any compensation for their services as councilmen.

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Section 3. The burgess shall preside over the organization meeting of the council, but he shall not vote thereat, unless the vote of the council be equally divided.

.....

Section 6. It shall be the duty of the council, a majority of whom shall be a quorum:

I. To meet statedly at least once a month.

II. To make and preserve full records of their proceedings.

III. To enact, revise, repeal, and amend such laws, rules, regulations, and ordinances, not inconsistent with the laws of the Commonwealth, as it shall deem beneficial to the borough, and to provide for the enforcement of the same.

IV. To publish in one newspaper printed in the county, and by twelve advertisements posted in public places in the borough, every enactment, regulation, ordinance, or other general law, at least ten days before the same shall take effect.

V. To provide by ordinance for the manner in which all notices shall be served, and to give personal notice of all orders and regulations affecting particular individuals.

VI. To cause to be made a plan of the roads, streets, lanes, alleys, and courts opened or laid out, together with such explanation as shall be necessary to a full understanding of the same. The plan shall be kept by the secretary, and shall be open to public inspection.

VII. To appoint and remove a treasurer and secretary. Council in their discretion may appoint a solicitor, one or two street commissioners, and such other officers as it shall deem necessary.

VIII. To fix the compensation of the treasurer, secretary, street commissioners, high constable, and such other officers and employes as they may appoint, to be paid from the borough treasury by orders drawn thereon.

IX. To fix the amount of security to be given by the treasurer, the high constable, and of such other officers and employes as it may designate.

X. To direct annually the publication of the accounts of the treasurer.

XI. To mitigate or remit fines and forfeitures in reasonable cases.

Section 7. Every ordinance and resolution, except as herein provided, passed by the council, shall be presented to the burgess for his approval. If the burgess approve, he shall sign it; but, if he shall not so approve, he shall return it, with his objections, to the council at its next regular meeting, when the objections shall be entered upon the minutes, and the council shall proceed to a reconsideration thereof. If, after such reconsideration, two-thirds of all the members elected to said council, or a majority of council plus one, when the number composing such council is less than nine, shall vote to pass such ordinance or resolution, it shall become of as full force and effect as if it had received the approval of the burgess; but in such case the vote shall be determined by yeas and nays, and the names and votes of the members shall be entered on the minutes. If any such ordinance or resolution shall not be returned by the burgess at the regular meeting of the council next succeeding its presentation to him, it shall likewise have as full force as if it had been approved.

ARTICLE II.

BURGESS.

Section 1. No burgess shall hold any other borough office or appointment during the term for which he is elected, nor be eligible to succeed himself; he shall not be a member of, nor preside at the meetings, of the council, except as provided in section three, article one of this chapter.

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Section 5. The burgess, before exercising the duties of his office, shall take and subscribe an oath or affirmation, and the same shall be filed as provided in chapter seven, article one, section two of this act.

Section 6. The salary of the burgess may be fixed by ordinance, to be paid from the borough treasury, in monthly instalments, on warrants authorized by the council. When so fixed such salary shall not be changed during the term of the incumbent.

Section 7. The salary of the burgess shall not exceed, per annum, one hundred dollars per thousand for the first five thousand population, or fraction thereof; and fifty dollars per annum for each additional one thousand of population or fractional majority thereof; the population to be determined by the last United States decennial census, or, by five times the number of electors in the borough as shown by the last registration thereof.

Section 8. Any salary, paid pursuant to sections six and seven of this article, shall be in lieu of all costs and fees allowed a burgess, whether acting as burgess or justice of the peace, and in such case the costs and fees shall be taxed and collected by the burgess and turned monthly into the borough treasury, together with a sworn statement of the same.

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Section 10. The burgess shall have power:

I. To administer oaths and affirmations in matters pertaining to borough affairs.

II. To exercise jurisdiction in all disputes between the borough and individuals arising under the ordinances, rules and regulations of the borough.

III. To exercise the powers and jurisdiction of justices of the peace in the enforcement of all ordinances of the borough, and the collection of fines and penalties imposed thereunder.

IV. To exercise the powers and jurisdiction of justices of the peace within the borough for the suppression of riots, tumults, and disorderly meetings; and in all criminal cases for the punishment of vagrants and disorderly persons.

Section 11. It shall be the duty of the burgess:

I. To preserve order in the borough, to enforce the ordinances and regulations, to hear complaints, to remove nuisances and to exact a faithful performance of the duties of the officers appointed.

II. To demand and receive sufficient security in the amount fixed by the borough from the treasurer and high constable.

III. To sign the by-laws, rules, regulations and ordinances after they shall have been correctly transcribed by the secretary.

IV. To keep correct accounts of all fees, fines and costs received by him; to render to the councils at each regular meeting, an itemized statement of all such moneys so received since the last regular meeting of the council, with the dates at which, and the names of the persons from whom, the same was received, and to pay all such moneys into the borough treasury, prior to such regular meeting.

V. To cause to be opened all public roads, streets, lanes or alleys lying partly within the borough.

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Section 13. Whenever the burgess is absent or incapacitated, the duties of his office shall be discharged by the president of council.

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ARTICLE V.

CONTROLLER.

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Section 2. The borough controller shall receive a fixed annual salary, to be fixed by ordinance, and not to exceed the sum of one thousand dollars per annum.

Section 3. The borough controller shall superintend the fiscal concerns of the borough. He shall examine, audit, and settle all accounts whatsoever in which the borough is concerned either as debtor or creditor, where provision for the settlement thereof is made by law; and where no such provision, or an insufficient provision has been made, he shall examine such accounts and report to the borough council the facts relating thereto, with his opinion thereon.

Section 4. The borough controller shall have supervision and control of the accounts of all departments, bureaus, and officers of the borough, authorized to collect, receive or disburse the public moneys, or who are charged with the management or custody thereof. He shall audit their respective accounts, and may at any time require from any of them a statement in writing of any moneys or property of the borough in their hands, or under their control; and he shall, immediately upon the discovery of any default, irregularity, or delinquency, report the same to the borough council. He shall also audit and report upon the account of any such officer upon the death, resignation, removal, or expiration of the term of the said officer. . . .

Section 6. The borough controller shall countersign all warrants upon the borough treasurer, the form thereof to be prescribed by council, but no warrant shall be countersigned unless there is money in the treasury to pay the same. Whenever a warrant on the treasurer shall be presented to the controller to be countersigned, the person presenting the same shall, if the controller require, produce evidence:—

1. That the amount expressed in the warrant is due to the person in whose favor it is drawn.

2. That the supplies or service, for payment of which the warrant is drawn, have been furnished or performed according to law and the terms of the contract.

Section 7. The borough controller shall not permit any appropriation made by the council to be overdrawn. Whenever an appropriation is exhausted, the object of which is not complete, he shall immediately report the fact to the council, and accompany such report with a statement of the moneys which have been drawn on such appropriation and the particular purpose for which they are drawn.

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CHAPTER VIII.

ELECTIONS—VACANCIES IN OFFICE.

ARTICLE I.

NUMBER, TERM AND TIME OF ELECTION OF OFFICERS.

. . . .

Section 5. It shall be lawful for the electors of the borough to elect:

1. In boroughs not divided into wards, seven councilmen, a burgess, high constable, and three auditors or a controller.

2. In boroughs divided into wards, at least one and not more than three councilmen in each ward, to be residents of the ward from which they are elected and chosen by the electors of the ward; also a burgess, a high constable and three auditors or a controller, who shall be chosen by the electors of the borough at large.¹

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¹ Boroughs had the option of accepting Article V of Chapter VIII, thereby substituting a borough controller for the former borough auditors.

PART V

MUNICIPAL RIGHTS AND LIABILITIES

34. Constitution of Pennsylvania, 1776.

Most of the early state constitutions were silent upon the question of the power of incorporating cities. In these states this power passed from the hands of the governor to the legislature because of the general principle of constitutional interpretation that powers not otherwise granted or provided by the constitution belong to the legislative branch of the government. The Pennsylvania constitution was exceptional in expressly conferring upon the legislature the power of granting charters of incorporation and constituting towns, boroughs, cities, and counties.

SOURCE—Pennsylvania Legislative Reference Bureau, *Constitutions of Pennsylvania* (Harrisburg, 1916), 226-227.

PLAN OR FRAME OF GOVERNMENT FOR THE COMMON-WEALTH OR STATE OF PENNSYLVANIA.

. . . .

Section the Ninth. . . . [The members of the House of Representatives shall be chosen annually. They shall constitute the general assembly, and are given power to] . . . grant charters of incorporation; constitute towns, boroughs, cities and counties; . . .

35. An Act Repealing the Charter of the City of Memphis, Tennessee, 1879.

No better illustration can be afforded of the plenary character of the power of the legislature to deal with municipalities than this act abolishing the charter of the city of Memphis. See also § 66 below, constituting taxing

districts in the place of cities whose charters had been abolished.

SOURCE—*Acts of the State of Tennessee passed by the Forty-first General Assembly, 1879 (Nashville, 1879), Chap. 10.*

AN ACT to repeal the Charters of certain Municipal Corporations, and to remand the Territory and Inhabitants thereof to the Government of the State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That an Act passed December 1, 1869, entitled "An Act to Reduce the Charter of the City of Memphis, and the several Acts amendatory thereof into one Act," being Chapter 26 of the Private Acts of 1869 and 1870; . . . [and other acts incorporating or amending the acts of incorporation of the City of Memphis] be, and the same are hereby, each and every of them, repealed, and all offices created and held under any by virtue of any of said Acts are abolished.

SEC. 2. *Be it further enacted*, That the Charters and amendments thereof of all municipal corporations within the State having a population of 35,000 inhabitants or over, by the Federal census of 1870, be, and the same are hereby, repealed, and all municipal offices held under them are abolished.

SEC. 3. *Be it further enacted*, That the charters and amendments thereof of all municipal corporations within this State having 35,000 inhabitants or over, at the date of the passage of this Act, be, and the same are hereby, repealed, and all municipal offices held thereunder are abolished. The Governor of the State will ascertain and declare, by proclamation, to what corporations this section applies; said proclamation shall be conclusive evidence of its truth, and shall be made within ten days from the passage of this Act.

SEC. 4. *Be it further enacted*, That all of the sections from Section 33 to Section 80, both inclusive, of an Act entitled "An Act to regulate and organize Municipal Corporations of certain population, and for the increase and diminution of their powers," Chapter 92, approved 23d March, 1875, and all other Acts and parts of Acts in conflict with this Act, be, and the same are hereby, repealed; all the other sections of said Chapter 92, and especially Section 81 of said chapter, being left in full force; and the population within the territorial limits as now defined, and the territory of all municipal corporations heretofore governed under and by

virtue of said repealed Sections 33 to 80 inclusive, are hereby resolved back into the body of the State, and all offices held under and by virtue of said repealed sections are hereby abolished; and all power of taxation in any form whatever, heretofore vested in or exercised by the authorities of said municipal corporations by virtue of any of the Acts of incorporation hereinbefore recited, or otherwise, is forever withdrawn and reserved to the Legislature; and the public buildings, squares, promenades, wharfs, streets, alleys, parks, fire-engines, hose and carriages, horses and wagons, engine-houses, engineer instruments, and all other property, real and personal, hitherto used by such corporations for municipal purposes, are hereby transferred to the custody and control of the State, to remain public property, as it has always been, for the uses to which said property has been hitherto applied. And no person holding office under and by virtue of any of said repealed sections, or any of the Acts above recited, shall, from and after the passage of this Act, exercise, or attempt to exercise, any of the powers or functions of said office.

SEC. 5. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed January 29, 1879.

Approved January 31, 1879.

36. An Act Creating the Metropolitan Police District of New York, 1857.

This act took the control of local police away from the city of New York and intrusted it to a commission appointed by the governor. It became the model for numerous other acts of the same sort in respect to New York and other cities. The police of Boston, Baltimore, St. Louis, and Kansas City are still controlled by state appointed commissions.

SOURCE—*Laws of the State of New York*, 1857 (Albany, 1857), II, Chap. 569.

AN ACT to establish a Metropolitan Police District, and to provide for the government thereof.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The counties of New-York, Kings, Westchester and Richmond, are hereby constituted for the purposes of this act, into one district, to be called "the Metropolitan Police District of the state of New-York." Immediately upon the passage of this act, and thereafter, from time to time, as required by this act, there shall be appointed by the governor, and by and with the consent of the senate, (except that during any recess of the senate the governor may appoint, subject to the thereafter consent of the senate, to the same,) five commissioners of police, who shall be the chief officers of the said "the Metropolitan police district," and who shall severally possess and perform therein the powers and duties authorised and enjoined by this act. The said commissioners, together with the mayors of the cities of Brooklyn and New-York, ex-officio, shall form the board of police for the said district, and a majority of them shall constitute a quorum of such board for the transaction of business.

§ 2. Three of said commissioners shall be appointed from the city of New-York, one from Kings county, one from the county of Richmond or Westchester. The persons so first appointed shall thereupon assemble together in the office of the secretary of state, and draw lots among themselves in the presence of the said secretary of state or his deputy, for three terms of office; one term to expire for three commissioners upon the first day of May, which will be in the year eighteen hundred and fifty-eight; another term to expire for two commissioners on the first day of May, in the year eighteen hundred and fifty-nine. Each commissioner appointed to fill a term succeeding an expiring one, shall be appointed thereafter for a full term of three years, and the appointment for such full term shall be made as provided in section first, and shall be made from the county in which the vacancy occurred. Any vacancy as commissioner of police for the said "the Metropolitan police district," shall be filled by the board of police for the residue of the unexpired term. Any one of the said commissioners who shall during his term of office, accept any other place of public trust or emolument, or who shall during the same period, receive any nomination for an office elective by the people, without publicly declining the same within ten days succeeding the said nomination, shall be deemed thereby to have vacated his office. Any one of the

commissioners aforesaid may be at all times removed by the governor, under the provisions of statutes relating to the removal from office of sheriffs, which provisions are hereby extended so as to relate to each one of the said commissioners. . . .

§ 4. The officers of the board of police shall be a president and a treasurer, who shall each be selected from among the said commissioners. The board shall have power to appoint a chief clerk and six deputy clerks for the said district, who shall severally hold office at the pleasure of the said board. The principal office of the board shall be located in such part of the said "the Metropolitan police district" as may be deemed most advisable and convenient for the transaction of business. The said office shall be rented by the board, and the superintendent of police hereafter created, shall have office accommodation in the same building with that occupied by the said board. The office accommodations for the two deputy superintendents of police hereinafter created, may be at the discretion of the commissioners, located in any part of the district, except that one deputy superintendent of police shall have office accommodations in the city of Brooklyn.

§ 5. It shall be the duty of the board of police hereby constituted, at all times of the day and night, within the boundaries of the said "the Metropolitan police district," to preserve the public peace; to prevent crime, and arrest offenders; to protect the rights of persons and of property, to guard the public health; to preserve order at every primary and public election; to remove nuisances existing in public streets, roads, places and highways; to provide a proper police force at every fire, in order that thereby the firemen and property may be protected; to protect strangers and travelers at steamboat and ship landings, and railway stations; to see that all laws relating to the observance of Sunday and regarding pawn-brokers, mock auctions, emigrants, elections, gambling, intemperance, lottery policies, vagrants, disorderly persons, and the public health, are promptly enforced; and to obey and enforce all ordinances of common councils and boards of supervisors, and town and village authorities, within the said "the Metropolitan police district," which are applicable to police or health.

§ 6. The said duties of the board of police shall be more especially executed under the direction and control of said board, and according to rules and regulations which it is hereby authorized to pass from time to time for the more proper government and discipline of its subordinate officers, by a police force for the whole

of the said "the Metropolitan police district" and authorized to do duty in any part thereof, without regard to residence or county lines. The said police force shall consist of a general superintendent of police, and two deputy superintendents of police, five surgeons of police, and so many inspectors or captains of police not to exceed forty, so many sergeants of police not to exceed one hundred and fifty, and so many police patrolmen as may be determined by the board of supervisors of the county of New-York, to be appointed as a quota of the patrol force to be paid for by said county, and as many patrolmen as may be determined upon by the common council of the city of Brooklyn, to be appointed as a quota of the patrol force to be paid for by the city of Brooklyn, and so many police patrolmen as may be determined upon by the supervisors of the towns of the county of Kings, not included within the municipal jurisdiction of the city of Brooklyn, to be appointed as a quota of the police force to be paid for by the said towns of the county of Kings, and as many police patrolmen as may be determined upon by the supervisors of the counties of Richmond and Westchester, to be appointed as a quota of the patrol force to be paid for by said counties respectively, in the mode and manner hereinafter provided; and the aforesaid authorities may from time to time increase or diminish the number of patrolmen, and until otherwise provided for as aforesaid, the said quota of patrol force for the county of New-York, and for the county of Kings, shall be of the number of patrolmen now existing by law in the cities of New-York and Brooklyn. The said officers hereby created for the said police force, shall be severally filled by appointment from the board of police, in the mode prescribed by this act; and each person so appointed shall hold office only during such time as he shall faithfully observe and execute all the rules and regulations of the said board, the laws of the state, and the ordinances existing within the district, enacted by the city, county, town and village authorities within the same, and which ordinances apply to such part of the district where the members of the police may be on duty. . . .

§ 20. The board of police shall at all times cause the ordinances of the cities of New-York and Brooklyn, to be properly enforced, and it shall be the duty of said board at all times, whenever consistent with the rules and regulations of the board, and with the requirements of this act, to furnish all information desired and comply with all the requests made by the common councils of the

said cities, or by the mayors thereof, or by the boards of supervisors of the counties of Westchester and Richmond and the county towns of Kings. . . .

§ 23. The treasurer of the board of police shall receive an annual stated salary of three thousand dollars, and each other commissioner shall receive an allowance of eight dollars for each day of actual service, the same to be certified to the comptroller of the state by the treasurer of the board; but no other compensation shall be paid or allowed to the members of the board. The general superintendent of police shall receive a like salary, of three thousand dollars; each deputy superintendent of police shall receive a like salary of two thousand dollars; each sergeant of police shall receive a like salary of fifteen hundred dollars; each inspector or captain of police shall receive a like salary of twelve hundred dollars, each sergeant of police shall receive a like salary of nine hundred dollars; the chief clerk to the board of police shall receive a like salary of two thousand dollars; and each deputy clerk a like salary of one thousand dollars. The pay of each police patrolman shall be at the rate of eight hundred dollars, and that of each doorman at the rate of seven hundred dollars per year. . . .

§ 26. The boards of supervisors in the county of New-York, and the joint board of supervisors and aldermen of the city of Brooklyn and Kings, respectively, shall annually raise and collect by tax upon the real and personal property taxable within the cities of New-York and Brooklyn, such sums of money as the board of police for the said "the Metropolitan police district," on or before the first Monday of June in each year, shall apportion as requisite and needful to be raised by each city and county, which several sums of money shall be applied by the said board of police for the fiscal purposes of this act. . . .

37. Extract from the Debates of the Pennsylvania Constitutional Convention, 1873.

This excerpt refers to the commission created by the legislature for the purpose of constructing the South Street bridge in Philadelphia. It shows the length to which legislative interference in city affairs may be carried.

SOURCE—*Debates of the Convention to Amend the Constitution of Pennsylvania, 1873* (Harrisburg, 1873), III, 121.

Mr. BARDSLEY. . . .

We have a commission in this city for the erection of a bridge over the Schuylkill river, at the foot of South street—a commission composed of men who are constantly changing by the various vicissitudes of life, and to-day they control the expenditure of over one million dollars. The city councils are required by an act of Assembly to raise that money, and they have no control whatever over its expenditure. Now, sir, the city at the same time is constructing bridges of a greater magnitude than the one whose construction is controlled by this commission, and no one will gainsay the fact that the municipal authorities are fully competent to undertake and successfully carry to completion the work, and in the wisdom of the city councils it has long since been decided that the erection of a bridge at South street was entirely unnecessary, and was not demanded by the interests of the city at that time. I simply refer to these facts to show the manner in which these commissions originated. The city councils, as I have said, deemed the erection of the bridge at South street as entirely unnecessary, but the act of the Legislature, creating this commission, was passed against the representations that were made, directly in the interest of some of our passenger railway companies whose agents were sent to Harrisburg for that purpose. The city councils almost unanimously refused to construct the bridge, and by reason of their refusal these companies and private corporations procured the necessary legislation at Harrisburg.

38. Report of the Senate Committee on Cities, New York, 1891.

This committee, which was popularly known as the Fassett Committee, was appointed in 1890 to investigate the subject of municipal government in the state of New York. The commission's general conclusions as to the underlying reasons for bad city government in that state, which it ascribed to the unsatisfactory relations existing between the state and its cities, are given below.

SOURCE—*Testimony taken before the Senate Committee on Cities* (Albany, 1891), V, 10-22.

Our investigations result in the conclusions that the chief diffi-

culties which underlie the government of cities in this State are fourfold.

First. Over legislation and too frequent yielding on the part of the Legislature to the importunities of representatives of the various cities for the passage of special or local bills. In our opinion the Constitution should be so amended as to protect cities against the power of individuals to appeal to the Legislature, and to protect the Legislature from the necessity of entertaining such appeals by restricting its power to legislation by general laws.

Second. The absence of a general law for the government of all cities in the State, whereby larger powers should be granted to local authorities and the Legislature correspondingly relieved.

Third. The absence of complete and accurate information relative to municipal administration, and as incident to this, the necessity for the enactment of a law which shall require a series of systematic annual reports to be filed by each municipality with some proper State officer, setting out with sufficient fullness and detail the classes of administrative and financial facts which we refer to hereafter, in order that the Legislature and the people may be enabled to advise themselves fully, and at all times, with regard to the general condition of the governments of cities, so far as the same can be made apparent by means of an accurate and systematic publication of reports showing the indebtedness, taxation and expenditure of such cities.

Fourth. The subordination of city business to the exigencies of State and national politics. . . .

Chief Justice Church's remark in the Sixty-second New York Reports, at page 459, is as true to-day as it was when it was made, that "it is scarcely safe for any one to speak confidently of the exact condition of the law in respect to public improvements in the cities of New York and Brooklyn. Enactments in reference thereto have been modified, superseded and repealed so often, and to such an extent, that it is difficult to ascertain just what statutes are in force at any particular time." . . .

The condition of the laws, as described by the Court of Appeals, is no more curious than the fact that special laws can be passed without any proper appreciation by the Legislature of their effect or meaning; in fact it is almost impossible for the Legislature to ascertain what the exact relation to the existing body of laws concerning any city any proposed bill bears. This is illustrated in detail in the testimony relative to the tax, dock and excise laws of

the city of New York and to the department of charities and corrections. The facilities with which legislation is passed and the motives which sometimes control those who seek its passage can not be better illustrated than by the following quotation from the opinion of Mr. Justice O'Brien, delivered in the Supreme Court in the matter of Cullen, 60 Hun, 534, relative to what was known as the Brown contract, in which the General Term of the First Department concurred. The court said: "It will be difficult to cite a more flagrant instance than the one here existing of a legal legislative act attempting to fasten on property owners a burden which the court and the local authorities have stamped as fraudulent and void. After defeat in the courts, the Legislature was successfully applied to, and a mandatory act was passed which compelled the local authorities to assess, as part of the cost, work done under a contract which was fraudulent in its conception, was never complied with, and was finally abandoned."

We feel that we should call your special attention to the large number of mandatory laws which have been passed by the Legislature during the past twenty years, making it obligatory upon the administrative officers of our municipalities to perform particular acts. This has been of frequent occurrence, and your committee can not too strongly condemn it as one of the chief causes of the miscarriages of local administration. It is the worst form which special legislation assumes, the evils of which, and the necessity of curing which, have so long been known, and with regard to which there is apparently an almost complete unanimity of opinion, as shown chiefly through the long series of official documents emanating from the mayors and chief financial officers of all the cities of the State. During the last six years this evil, however, has been less marked, and in most cases where mandatory laws have been passed it has been with the approval and on the solicitation of the local representatives and authorities themselves. It is always sure to exist where city charters are so easy of amendment as at present, and the system, rather than the Legislature is to blame.

Under the existing system, stability of city government is a practical impossibility. The officers of our municipalities find it impossible to determine upon any general policy whatever looking towards better administration with the expectation that any such policy can ever be carried out to its proper and logical conclusion. This is due not only to the continued possibility of legislative interference, but because of the pertinacity with which interested parties

or local authorities appeal to the Legislature year after year in matters affecting city government—from the most important to the most insignificant—thus depriving the cities of their administrative autonomy, and subjecting them to conditions which do not prevail in the administration of the business of any other corporation whatever. For this the people are themselves very largely to blame, because of their indifference to the policy of their local authorities and their failure to protect both themselves and the Legislature by a knowledge and disclosure of the facts. These are conditions which, if applied to the business of any other corporation, would make the maintenance of a continued policy, and a successful administration as impossible as they are to-day in the government of our municipalities, and produce waste and mismanagement such as is now the distinguishing feature of municipal business as compared with that of private corporations. The situation then is as follows:

That it is frequently impossible for the Legislature, the municipal officers, or even for the courts to tell what the laws mean. That it is usually impossible for the Legislature to tell what the probable effect of any alleged reform in the laws is likely to be. That it is impossible for anyone, either in private life or in public office, to tell what the exact business condition of any city is, and that municipal government is a mystery even to the experienced. That municipal officers have no certainty as to their tenure of office. That municipal officers can escape responsibility for their acts or failures by securing amendments to the law. That municipal officers can escape real responsibility to the public because of the unintelligibility of the laws, and the insufficient publicity of the facts relative to municipal government. That local authorities receive permission to increase the municipal debt for the performance of public works which should be paid for out of taxes. That the conflict of authority is sometimes so great as to result in a complete or partial paralysis of the service. That our cities have no real local autonomy. That local self-government is a misnomer; and that consequently so little interest is felt in matters of local business that in almost every city in the state it has fallen into the hands of professional politicians.

Our cities are, so far as we have been able to learn, the only important cities where such conditions still exist. Wherever they have heretofore existed they have been cured by the abstention on the part of the Legislature from special legislation and the enact-

ment of general laws springing out of a general uniform, logical and coherent plan for the government of cities.

We, therefore, urge upon your consideration the immediate necessity for a Constitutional amendment which shall prevent special legislation affecting the government of cities. . . .¹

The proposed Constitutional amendment is suggested for the purpose of making it the imperative duty of the Legislature to pass a general law for the government of cities not only, but in order definitely to limit the power of the legislature in the premises. The necessity for passing a general law even in the absence of Constitutional amendment is regarded by us as the first and most practical step towards the establishment of intelligent conditions for the conduct of municipal business. . . .

The Legislature, however, is not in position to pass such bill at the present time, because of the insufficiency of the data necessary to enable it properly to prepare such a measure. . . . The preparation of a bill which shall consolidate all the best features of the existing charters of this State, which shall have all the best characteristics of the general laws of other States, but which shall nevertheless protect the vested charter rights of the several cities in this State and the private interests which have become vested from time to time, and bring order out of the existing chaos, without in any way impairing the administrative work of the several municipal corporations, or even temporarily stopping or changing the exercise of functions now vested in certain officers, and in such manner as not to complicate or injure the municipal administration is a most difficult and serious task, and one which we have found to be impossible of performance by us down to the present time.

We are, however, fully convinced that, to secure home rule for cities, and to guarantee uniform, systematic and intelligent city government, as well as to relieve the Legislature of the greater part of the work it is now called upon to do, and thus give it time and opportunity to perform its remaining work with greater care and accuracy, and free from the influences and motives which too frequently lie behind local measures, some such bill should be passed, at the earliest practicable date. . . .²

We have found great difficulty in arriving at the facts concerning what, on its face, should appear under any circumstances to

¹ The discussion of the text of the proposed amendment is omitted.

² The report recommended the appointment of a commission to draft a general law for the government of cities.

be a simple matter and one easy of discovery, namely, the exact cost per annum of the government of each of the cities; the extent to which each of the cities has used its credit; the extent to which it uses its taxing power; the amount of the expenditure from moneys derived from loans; the amount of the expenditure from money derived from taxation; the existence or non-existence of a sinking fund; the operations of the sinking fund; the kinds and classes of taxes or licenses or other sources of revenue to the city; the right, franchises and property of the city; the amount of indebtedness of the city, permanent or floating, and the extent to which the credit of the city is used for temporary purposes in anticipation of the collection of taxes or other revenues. . . .

The system of accounting in the several cities is more unintelligible and chaotic even than the laws under which the cities themselves are administered. The chaos in the accounts may be, and in our opinion must be, credited in the first instance to the chaos in the laws. . . . We believe that there can be no wise legislation with reference to the government of cities, unless it be possible for the officers of this State—and especially for the Legislature and the Governor—to be able at all times to know with definiteness and certainty the facts relative to the general conditions of municipal administration in each of the cities, and more particularly to the exact financial situation of each and all of them. To secure this object we, therefore, recommend the passage of a bill which shall require the chief financial officer of each city in the State to file annually with the State Comptroller a report of the financial administration for the past year. In order to do this effectually it will be necessary that such bill should fix a term which shall be treated as the fiscal year of all cities alike. The financial year of each city should begin on the first of January and end on the thirty-first of December of each year. The Comptroller should be required to publish a special report on the municipal finances within a certain fixed time after the receipt by him of the reports of the several cities. If the municipal fiscal year should end the thirty-first day of December it would be entirely practicable for each city to have its report in the hands of the State Comptroller within thirty days after the year's close. The Comptroller would be enabled to summarize these reports in the form of general tables, which general tables, together with the reports themselves, could always be ready for publication before the adjournment of the Legislature. The Legislature, and what is of more importance, the

people of the State would, therefore, at all times have before them an accurate and complete report of the general conditions of municipal affairs throughout the State. One of the results of such a law would be to compel all cities to adopt the same general titles of accounts and to conform their system of bookkeeping, generally speaking, to the requirements of the law, so as to enable them to make a proper report to the Comptroller. . . .

39. Remarks of Mr. Murphy in the New York Constitutional Convention, 1846.

Mr. Murphy stated with considerable force the evils of special legislation for cities.

SOURCE—*Debates and Proceedings in the New York State Convention for the Revision of the Constitution, 1846* (Croswell and Sutton ed., Albany, 1846), 739-741.

Mr. MURPHY. . . . The great object to be obtained by a general law is to secure the wisdom of the whole state, or at least of all the parts of the state interested in it, for the formation of that law; and to prevent those incongruities which special legislation presents, and which are the causes of many of the evils under which our cities are laboring in regard to debt and assessments. The design of state government is not only to protect from powerful neighbors, but to concentrate the experience and wisdom of a greater number of persons for the common benefit, by wise laws. Special legislation defeats this design. Localities for which this legislation is made, do not derive the benefit of the wisdom of the whole legislative body. A charter as now granted is for the most part a piece of empiricism by the wiseacres of the place where it is to be put in force. After being prepared at home, it is sent to the legislature to be passed. When it reaches that body, no one except the representatives from the locality cares what it contains. It is thus left in charge of the same interest as that which prepared it. He would appeal to every member of the Convention who had been a member of the legislature, if that was not the course pursued in reference to all local bills. They are passed without examination because they affect only a particular community. In this way opposite and dangerous principles are put into the statute book; and the wholesome and beneficent provisions of an united action on

the part of the legislature for a long period are oftentimes lost. . . .

From this brief analysis of the provisions of the charters and laws relating to one single subject, we find no two alike in principle. The same want of uniformity may be traced throughout in relation to almost every other power. Every city may be said to be a law unto itself; and the sovereignty of the state, instead of being exercised in its behalf, is absolutely surrendered to it, to be used at its own discretion. As I have already said the practice of the legislature has been to confer upon cities just such powers as they asked for. These powers affecting the locality only, the rest of the state has felt indifferent to them. Thus our present incongruous system has grown up, the work of different hands in different parts, without any attempt to produce uniformity. The consequences have been great injustice oftentimes to individuals, damage to the cities, and much trouble to the judicial tribunals of the state, arising from the adoption of wrong principles—from the consequent mistakes of the corporate authorities—and from the necessity of giving each charter its own judicial interpretation. The only remedy for this is an uniform or general law defining the powers of cities. . . .

40. Remarks of Mr. Miles and Mr. Birney in the Michigan Constitutional Convention, 1867.

In this extract Mr. Birney took issue with Mr. Miles as to the manner of passing special acts in the legislature. Mr. Birney's contentions are supported by the history of special legislation in other states as well as in Michigan.

SOURCE—*Debates and Proceedings of the Constitutional Convention of the State of Michigan, 1867* (Lansing, 1867), II, 297-298.

Mr. MILES. . . .

And we so find it in this State. A general law for the incorporation of villages, which would perhaps operate pretty well for a village in the interior of the State, would not operate well in other localities. It was, therefore, thought by the committee that it would be best to leave the provision in this respect as it is in the Constitution of 1850, giving the Legislature authority to provide for the incorporation of cities and villages, and leave it to them to say whether it shall be done by general or special laws, or by both methods. Our Legislature, under the present Constitution, have

employed both methods; one by means of a general law for the incorporation of villages, under which all villages might form themselves into corporations; another by means of which villages are enabled to apply to the Legislature for special acts of incorporation. So far as the time of the Legislature is concerned, very little of it is taken up for the purpose of passing acts of incorporation for cities and villages. Those acts are drawn up by those most directly interested in the matter, presented by their immediate representatives, and upon being examined and found to conform to the general laws of the State, they are usually passed without taking up much of the time of the Legislature. In fact, not so much time was taken up during the entire session of last winter for the passage of acts incorporating a very large number of villages, as it would take to discuss a few provisions of a general law upon the subject. It became necessary to pass a large number of these acts, because the Legislature of the State for three or five years previously had been engaged mostly in the passage of laws concerning our troops in the field.

Mr. BIRNEY. The gentleman says it takes but very little time for the passage of these laws; yet, he admits that when you come to publish them at last, two-thirds of the volumes of our session laws consist of legislation of this kind. Why is this? Because some one person interested in this matter sits down, writes out a charter, sends it to a member of the Legislature who presents it, and it is referred to the committee on corporations. That committee do not read it or examine it; they ask the member who presents it, if it is all right? If he says it is, they then report it and recommend its passage; nobody reads it, it passes and goes to the Governor for his approval, and very likely he never reads it; if he does, he is a very persevering man. Now, it is not supposed that whoever prepares these acts is acquainted with the entire wants of the people; at all events, he is not probably in all respects the best person to prepare such an instrument. The result often is that great injustice and wrong is done to many interests. These acts are frequently got up to serve some peculiar interest. But if a general law is required, the people can understand what sort of a provision they can adopt, and what action they can take to secure what they desire. A general law, well drawn up, will provide everything that a city or village usually needs.

It is said there is now a general law in this State for the incorporation of villages. It is true, there is such a law; but it is

not observed, possibly because it may be somewhat defective. It is not observed because the process referred to here can be gone through by those who desire to charter a village. Persons can send a bill here, and get it passed through the Legislature, more easily than they can arrange the matter before a board of supervisors. There are very few members of the Legislature who can understand the necessities and wants of any particular village. They do not profess to know about it; they do not attempt to judge. If any act of incorporation which is presented suits the member from that locality, they do not consult anybody else about it. The people of the vicinity are not consulted, and often know nothing about the charter provided for them until the act is passed, and frequently not for some time afterwards. There was an act passed for our city last winter, but I could not get a copy of it until a week ago; no one could get it, except those who prepared it. . . .

41. The Inherent Right of Local Self-Government. Extract from the opinion of Thomas M. Cooley in *People ex rel LeRoy et al. v. Hurlbut*, 1871.

The question before the court in this case was the constitutionality of a legislative act creating a Board of Public Works for the city of Detroit, the first members of which were named in the act. In holding it unconstitutional Judge Cooley laid down the doctrine that there is in the city an inherent right of local self-government. This decision was followed by the courts in Indiana, Kentucky, and for a brief period in Nebraska. In no other states has this doctrine been supported. It can be stated as a general proposition that, in the absence of special constitutional provision, there is no right of local self-government, not subject to legislative control.¹

SOURCE—24 Michigan, 44, at page 93 *et seq.*

COOLEY, J.

I find no valid objection to the title of the act in question, or to the notice given of its introduction or to the powers conferred.

¹ See J. F. Dillon, *Treatise on the Law of Municipal Corporations*, 5th edition, I, 154 *et seq.*

In respect to those matters, I agree in what has been said by my brother Christiancy. Nor do I think the appointment of the first members of the board of public works is necessarily void as an exercise of executive authority. . . .

These, however, are matters of secondary importance; there lies over and beyond these a question of the highest interest and concern, which cannot be answered without a careful scrutiny of the structure of our government, and an examination of the principles which underlie free institutions in America. We have before us a legislative act creating for the city of Detroit a new board, which is to exercise a considerable share of the authority usually possessed by officers locally chosen; to have general charge of the city buildings, property and local conveniences, to make contracts for public works on behalf of the city, and to do many things of a legislative character which generally the common council of cities alone is authorized to do. The legislature has created this board, and it has appointed its members; and both the one and the other have been done under a claim of right which, unless I wholly misunderstand it, would justify that body in taking to itself the entire and exclusive government of the city, and the appointment of all its officers, excepting only the judicial, for which, by the constitution, other provision is expressly made. And the question, broadly and nakedly stated, can be nothing short of this: Whether local self-government in this state is or is not a mere privilege, conceded by the legislature in its discretion, and which may be withdrawn at any time at pleasure? I state the question thus broadly because, notwithstanding the able arguments made in this case, and after mature deliberation, I can conceive of no argument in support of the legislative authority which will stop short of this plenary and sovereign right.

Now, it must be conceded that the judicial decisions and law writers generally assert that the state creates the municipal bodies, endows them with such of the functions of corporate life and entrusts them with such share in the local government, as to the legislative judgment shall seem best; that it controls and regulates their action while they exist, subjects them to such changes as public policy may dictate, and abolishes them at discretion; in short that the corporate entities are mere agencies which the state employs for the convenience of government, clothing them for the time being with a portion of its sovereignty, but recalling the whole or any part thereof whenever the necessity or usefulness

of the delegation is no longer apparent. This I understand to be the accepted theory of state constitutional law as regards the municipal governments. We seldom have occasion to inquire whether this amplitude of legislative authority is or is not too strongly expressed, for the reason that its exercise is generally confined within such bounds as custom has pointed out, so that no question is made concerning it. But such maxims of government are very seldom true in any thing more than a general sense; they never are and never can be literally accepted in practice.

Our constitution assumes the existence of counties and townships, and evidently contemplates that the state shall continue to be subdivided as it has hitherto been; but it nowhere expressly provides that every portion of the state shall have county or township organizations. It names certain officers which are to be chosen for these subdivisions, and confers upon the people the right to choose them; but it does not in general define their duties, nor in terms preclude the legislature from establishing new officers, and giving to the incumbents the general management of municipal affairs. If, therefore, no restraints are imposed upon legislative discretion beyond those specifically stated, the township and county government of any portion of the state might be abolished, and the people be subjected to the rule of commissions appointed at the capital. The people of such portion might thus be kept in a state of pupillage and dependence to any extent, and for any period of time the state might choose.

The doctrine that within any general grant of legislative power by the constitution there can be found authority thus to take from the people the management of their local concerns, and the choice, directly or indirectly, of their local officers, if practically asserted, would be somewhat startling to our people, and would be likely to lead hereafter to a more careful scrutiny of the charters of government framed by them, lest sometime, by an inadvertant use of words, they might be found to have conferred upon some agency of their own, the legal authority to take away their liberties altogether. If we look into the several state constitutions to see what verbal restrictions have heretofore been placed upon legislative authority in this regard, we shall find them very few and simple. We have taken great pains to surround the life, liberty, and property of the individual with guaranties, but we have not, as a general thing, guarded local government with similar protections. We must assume either an intention that the legislative control

should be constant and absolute, or, on the other hand, that there are certain fundamental principles in our general framework of government, which are within the contemplation of the people when they agree upon the written charter, subject to which the delegations of authority to the several departments of government have been made. That this last is the case, appears to me too plain for serious controversy. The implied restrictions upon the power of the legislature, as regards local government, though their limits may not be so plainly defined as express provisions might have made them, are nevertheless equally imperative in character, and whenever we find ourselves clearly within them, we have no alternative but to bow to their authority. The constitution has been framed with these restrictions in view, and we should fall into the grossest absurdities if we undertook to construe that instrument on a critical examination of the terms employed, while shutting our eyes to all other considerations.

The circumstances from which these implications arise are: *First*, that the constitution has been adopted in view of a system of local government, well understood and tolerably uniform in character, existing from the very earliest settlement of the country, never for a moment suspended or displaced, and the continued existence of which is assumed; and, *second*, that the liberties of the people have generally been supposed to spring from, and be dependent upon, that system.

DeTocqueville speaks of our system of local government as *the American system*, and contrasts it forcibly with the French idea of centralization, under the influence of which constitutional freedom has hitherto proved impossible.—*Democracy in America*, chapter 5. Lieber makes the same comparison, and shows that a centralized government, though by representatives freely chosen, must be despotic, as any other form of centralization necessarily is. "Self-government," he says, "means everything for the people and by the people, considered as the totality of organic institutions, constantly evolving in their character as all organic life is; but not a dictatorial multitude. Dictating is the rule of the army, not of liberty; it is the destruction of individuality."—*Civil Liberty and Self-Government*, chap. 21. The writer first named, speaking of the New England township government, whose system we have followed in the main, says: "In this part of the union the impulsion of political activity was given in the townships; and it may almost be said that each of them originally formed an independent

nation. When the kings of England asserted their supremacy, they were contented to assume the central power of the state. The townships of New England remained as they were before; and, although they are now subject to the state, they were at first scarcely dependent upon it. It is important to remember that they have not been invested with privileges, but that they seem, on the contrary, to have surrendered a portion of their independence to the state. The townships are only subordinate to the states in those interests which I shall term *social*, as they are common to all the citizens. They are independent in all that concerns themselves; and among the inhabitants of New England, I believe that not a man is to be found who would acknowledge that the state has any right to interfere in their local interests."—*Democracy in America, ubi supra*. Now, if this author is here speaking of the theory of our institutions, he is in error. It is not the accepted theory that the states have received delegations of power from independent towns; but the theory is, on the other hand, that the state governments precede the local, create the latter at discretion, and endow them with corporate life. But, historically, it is as difficult to prove this theory as it would be to demonstrate that the origin of government is in compact, or that title to property comes from occupancy. The historical fact is, that local governments universally, in this country, were either simultaneous with, or preceded, the more central authority. In Massachusetts, originally a democracy, the two may be said to have been at first identical; but when the colony became a representative government, and new bands pushed out into the wilderness, they went bearing with them grants of land and authority for the conduct of their local affairs.—*Hutchinson's Massachusetts Bay, ch. 1; Washburn's Jud. Hist. of Mass. ch. 1; Body of Liberties, Sec. 62, 66, 72; Elliot's New England, Vol. 4, pp. 425, 427. . . .*

In view of these historical facts, and of these general principles, the question recurs whether our state constitution can be so construed as to confer upon the legislature the power to appoint for the municipalities, the officers who are to manage the property, interests, and rights in which their own people alone are concerned. If it can be, it involves these consequences: As there is no provision requiring the legislative interference to be upon any general system, it can and may be partial and purely arbitrary. As there is nothing requiring the persons appointed to be citizens of the locality, they can and may be sent in from abroad, and it is not

a remote possibility that self-government of towns may make way for a government by such influences as can force themselves upon the legislative notice at Lansing. As the municipal corporation will have no control, except such as the state may voluntarily give it, as regards the taxes to be levied, the buildings to be constructed, the pavements to be laid, and the conveniences to be supplied, it is inevitable that parties, from mere personal considerations, shall seek the offices, and endeavor to secure from the appointing body, whose members in general are not to feel the burden, a compensation such as would not be awarded by the people, who must bear it, though the chief tie binding them to the interests of the people governed might be the salaries paid on the one side and drawn on the other. As the legislature could not be compelled to regard the local political sentiment in their choice, and would, in fact, be most likely to interfere when that sentiment was adverse to their own, the government of cities might be taken to itself by the party for the time being in power, and municipal governments might easily and naturally become the spoils of party, as state and national offices unfortunately are now. All these things are not only possible, but entirely within the range of probability, if the positions assumed on behalf of the state are tenable. It may be said that these would be mere abuses of power, such as may creep in under any system of constitutional freedom; but what is constitutional freedom? Has the administration of equal laws by magistrates freely chosen no necessary place in it? Constitutional freedom certainly does not consist in exemption from governmental interference in the citizen's private affairs; in his being unmolested in his family, suffered to buy, sell and enjoy property, and generally to seek happiness in his own way. All this might be permitted by the most arbitrary ruler, even though he allowed his subjects no degree of political liberty. The government of an oligarchy may be as just, as regardful of private rights, and as little burdensome as any other; but if it were sought to establish such a government over our cities by law, it would hardly do to call upon a protesting people to show where in the constitution the power to establish it was prohibited; it would be necessary, on the other hand, to point out to them where and by what unguarded words the power had been conferred. Some things are too plain to be written. If this charter of state government which we call a constitution, were all there was of constitutional command; if the usages, the customs, the maxims, that have sprung from the the habits of life, modes

of thought, methods of trying facts by the neighborhood, and mutual responsibility in neighborhood interests, the precepts which have come from the revolutions which overturned tyrannies, the sentiments of manly independence and self-control which impelled our ancestors to summon the local community to redress local evils, instead of relying upon king or legislature at a distance to do so,—if a recognition of all these were to be stricken from the body of our constitutional law, a lifeless skeleton might remain, but the living spirit, that which gives it force and attraction, which makes it valuable and draws to it the affections of the people, that which distinguishes it from the numberless constitutions, so called, which in Europe have been set up and thrown down within the last hundred years, many of which, in their expressions, have seemed equally fair and to possess equal promise with ours, and have only been wanting in the support and vitality which these alone can give,—this living and breathing spirit, which supplies the interpretation of the words of the written charter, would be utterly lost and gone.

Mr. Justice Story has well shown that constitutional freedom means something more than liberty permitted; it consists in the civil and political rights which are absolutely guaranteed, assured and guarded; in one's liberties as a man and a citizen,—his right to vote, his right to hold office, his right to worship God according to the dictates of his own conscience, his equality with all others who are his fellow-citizens; all these guarded and protected, and not held at the mercy and discretion of any one man or of any popular majority.—*Story, Miscellaneous Writings*, 620. If these are not now the absolute right of the people of Michigan, they may be allowed more liberty of action and more privileges, but they are little nearer to constitutional freedom than Europe was when an imperial city sent out consuls to govern it. The men who framed our institutions have not so understood the facts. With them it has been an axiom, that our system was one of checks and balances; that each department of the government was a check upon the others, and each grade of government upon the rest; and they have never questioned or doubted that the corporators in each municipality were exercising their franchises under the protection of certain fundamental principles which no power in the state could override or disregard. The state may mould local institutions according to its views of policy or expediency; but local government is matter of absolute right; and the state cannot take it

away. It would be the boldest mockery to speak of a city as possessing municipal liberty where the state not only shaped its government, but at discretion sent in its own agents to administer it; or to call that system one of constitutional freedom under which it should be equally admissible to allow the people full control in their local affairs, or no control at all.

What I say here is with the utmost respect and deference to the legislative department; even though the task I am called upon to perform is to give reasons why a blow aimed at the foundation of our structure of liberty should be warded off. Nevertheless, when the state reaches out and draws to itself and appropriates the powers which from time immemorial have been locally possessed and exercised, and introduces into its legislation the centralizing ideas of continental Europe, under which despotism, whether of monarch or commune, alone has flourished, we seem forced back upon and compelled to take up and defend the plainest and most primary axioms of free government, as if even in Anglican liberty, which has been gained step by step, through extorted charters and bills of rights, the punishment of kings and the overthrow of dynasties, nothing was settled and nothing established.

But I think that, so far as is important to a decision of the case before us, there is an express recognition of the right of local authority by the constitution. That instrument provides (*Art. XV., § 14*) that "judicial officers of cities and villages shall be elected; and all other officers shall be elected or appointed, at such time and in such manner as the legislature may direct." It is conceded that all elections must, under this section, be by the electors of the municipality. But it is to be observed that there is no express declaration to that effect to be found in the constitution; and it may well be asked what there is to localize the elections any more than the appointments. The answer must be, that in examining the whole instrument a general intent is found pervading it, which clearly indicates that these elections are to be by the local voters, and not by the legislature, or by the people of a larger territory than that immediately concerned. I think also that when the constitution is examined in the light of previous and contemporaneous history, the like general intent requires, in language equally clear and imperative, that the choice of the other corporate officers, shall be made in some form, either directly or indirectly, by the corporators themselves.

The previous history I have sufficiently referred to; and it is

a part of the public history of the times that the convention which framed the constitution of 1850 had in view as prominent objects, to confide more power to the people, to make officers generally elective, and to take patronage from the executive. We see this in the provisions for the elections of judges, state officers, regents of the university and prosecuting attorneys; in the requirement that banking laws shall be referred to the people for adoption; in the exclusive control given to the supervisors in the settlement of claims against counties, and in the express provision that "the legislature may confer upon organized townships, incorporated cities and villages, and upon the boards of supervisors of the several counties, such powers of a local, legislative and administrative character as they may deem proper." All these were in the direction of popularizing authority. Even the officers who were to perform the duties of master in chancery were required to be elected. When, therefore, we seek to gather the meaning of the constitution from "the four corners of the instrument," it is impossible to conclude that the appointments here prescribed, in immediate connection with elections by the local voters, and by a convention intent on localizing and popularizing authority, were meant to be made at the discretion of the central authority, in accordance with an usage not prevalent since the days of the Stuarts, and which even then was regarded, both in England and America, as antagonistic to liberty and subversive of corporate rights.

So far, then, as the act in question undertakes to fill the new offices with permanent appointees, it cannot be sustained, either on general principles, or on the words of the constitution. It may, nevertheless, not be wholly void. I have no doubt it was entirely competent for the legislature to abolish the old boards and provide for a new one to take the place of all. That would be but the ordinary exercise of legislative supervision and control in matters of municipal regulation. I think, also, that the legislature might make provisional appointments to put the new system in operation. The right to do this appears to me to be incident to the right to confer and recall corporate power, and rests upon the same ground as the right to provide agencies for the organization of the municipal corporation in the first place, for the apportionment of its property and debts if its territory should be divided and organized into two, or for the winding up of its concerns if the charter should be taken away. There is no doubt of the right of the state to do any of these things; not by virtue of any general authority

to take to itself the management of the local concerns, but because the inauguration and modification of local government can only be provided for without confusion and injustice, by the aid of the guiding and assisting hand of the authority that creates and modifies. The right in the state is a right, not to run and operate the machinery of local government, but to provide for and put it in motion. It corresponds to the authority which constitutional conventions sometimes find it needful to exercise, when they prescribe the agencies by means of which the new constitution they adopt is to be made to displace the old. . . .

42. Constitution of Ohio, 1851.

Ohio was the first state to prohibit the chartering of cities by special legislation. This was done by Sections 1 and 6 of Article 13 of the constitution of 1851. The effect of this constitutional prohibition was, however, destroyed by the legislature's practice of classifying cities by population. Cities were so minutely classified in Ohio that each of the larger cities was in a class by itself. In 1902 the supreme court of the state held classification unconstitutional.¹ This is the only instance in which a court has taken this position.

SOURCE—*Acts of a General Nature passed by the Fiftieth General Assembly of the State of Ohio, 1852* (Columbus, 1852), 9, 27.

ARTICLE II.

. . . .

SEC. 26. All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.

. . . .

ARTICLE XIII.

SEC. 1. The General Assembly shall pass no special act conferring corporate powers.

. . . .

¹*State ex rel. Knisely v. Jones*, 66 Ohio State 453.

SEC. 6. The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

....

43. Classification of Counties in California.

The most extreme example of classification is that of California counties. California has 58 counties and 58 classes of counties.

SOURCE—*Statutes of California*, 1921 (San Francisco, 1921), Chap. 3.

An act to amend sections four thousand five c and four thousand six of the Political Code, relating to the population and classification of the several counties of the State.

....

SECTION 1. Section four thousand five c of the Political Code is hereby amended to read as follows;

4005c. The population of the counties of this state is hereby ascertained and determined to be and is as follows:

....

SEC. 2. Section four thousand six of the Political Code of the State of California is hereby amended to read as follows:

4006. For the purpose of regulating the compensation of the officers herein provided for, the several counties of this state are hereby classified, according to their population (as ascertained and determined in section four thousand five c) of this code, as follows, to wit:

Counties containing a population of nine hundred thousand and over shall belong to and be known as counties of the first class. . . .¹

¹ Instead of the detailed provisions of the statute, the table from the official California Blue Book, giving a concise statement of the classification made by the act of 1921, is reproduced. (*California Blue Book, Legislative Manual or State Roster*, April, 1924 (Sacramento), 156.)

Class	County	Population	Population, Census, 1920
1....	Los Angeles	900,000 and over	936,438
2....	San Francisco	500,000 and under 900,000....	506,676
3....	Alameda	300,000 and under 500,000....	344,177
4....	Fresno	120,000 and under 300,000....	128,779
5....	San Diego	110,000 and under 120,000....	112,248
6....	Santa Clara	100,000 and under 110,000....	100,588
7....	Sacramento	90,000 and under 100,000....	91,029
8....	San Joaquin	75,000 and under 90,000....	79,905
9....	San Bernardino	70,000 and under 75,000....	73,401
10....	Orange	60,000 and under 70,000....	61,375
11....	Tulare	55,000 and under 60,000....	59,031
12....	Kern	54,000 and under 55,000....	54,843
13....	Contra Costa	53,000 and under 54,000....	53,889
14....	Sonoma	51,000 and under 53,000....	51,990
15....	Riverside	50,000 and under 51,000....	50,297
16....	Stanislaus	43,500 and under 50,000....	43,557
17....	Imperial	43,300 and under 43,500....	43,383
18....	Santa Barbara	41,000 and under 43,000....	41,097
19....	Solano	40,000 and under 41,000....	40,602
20....	Humboldt	37,000 and under 40,000....	37,857
21....	San Mateo	36,000 and under 37,000....	36,781
22....	Butte	30,000 and under 36,000....	30,030
23....	Ventura	28,000 and under 30,000....	28,724
24....	Monterey	27,500 and under 28,000....	27,980
25....	Marin	27,000 and under 27,500....	27,342
26....	Santa Cruz	26,000 and under 27,000....	26,269
27....	Merced	24,500 and under 26,000....	24,579
28....	Mendocino	24,000 and under 24,500....	24,116
29....	Kings	22,000 and under 24,000....	22,031
30....	San Luis Obispo....	21,000 and under 22,000....	21,893
31....	Napa	20,000 and under 21,000....	20,678
32....	Placer.. ..	18,580 and under 20,000....	18,584
33....	Siskiyou	18,500 and under 18,580....	18,545
34....	Yolo	17,000 and under 18,500....	17,105
35....	Shasta	13,000 and under 17,000....	13,311
36....	Tehama	12,500 and under 13,000....	12,882
37....	Madera	12,000 and under 12,500....	12,203
38....	Glenn	11,000 and under 12,000....	11,853
39....	Nevada	10,500 and under 11,000....	10,860
40....	Yuba	10,300 and under 10,500....	10,375
41....	Sutter	10,000 and under 10,300....	10,115
42....	Colusa	9,000 and under 10,000....	9,220
43....	San Benito	8,900 and under 9,000....	8,995
44....	Lassen	8,500 and under 8,900....	8,507
45....	Amador	7,790 and under 8,500....	7,793
46....	Tuolumne	7,750 and under 7,790....	7,768
47....	Inyo	7,000 and under 7,750....	7,031
48....	El Dorado	6,400 and under 7,000....	6,426
49....	Calaveras	6,000 and under 6,400....	6,183
50....	Plumas	5,600 and under 6,000....	5,681
51....	Lake	5,500 and under 5,600....	5,542
52....	Modoc	5,000 and under 5,500....	5,425
53....	Mariposa	2,770 and under 5,000....	2,775
54....	Del Norte	2,750 and under 2,770....	2,759
55....	Trinity	2,500 and under 2,750....	2,551
56....	Sierra	1,500 and under 2,500....	1,783
57....	Mono	500 and under 1,500....	960
58....	Alpine	Less than 500	243

44. Constitution of Illinois, 1870.

The Illinois constitution of 1870 prohibited special legislation for a large number of purposes, among which were "the incorporating of cities, towns or villages or changing and amending the charter of any town, city or village." The Illinois legislature, unlike that of other states, has interpreted this decision as requiring it to deal with the government of all cities and villages by a single general act. Some provisions of the act, however, are made to vary with the size of the city. Illinois has also introduced optional substitutes for portions of the cities and villages act, which a city or village may adopt by popular vote.

SOURCE—*Journal of the Constitutional Convention of the State of Illinois, 1869-1870* (Springfield, 1870), 998-999.

ARTICLE IV

.

SPECIAL LEGISLATION PROHIBITED.

§ 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For—

.

Vacating roads, town plats, streets, alleys and public grounds;

.

Regulating county and township affairs;

.

Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village;

Providing for the election of members of the board of supervisors in townships, incorporated towns or cities:¹

.

In all other cases, where a general law can be made applicable, no special law shall be enacted.

45. Constitution of Minnesota, 1892.

The Minnesota constitution of 1892 is representative of the constitutions which have attempted to prohibit special

¹ Twenty-three specific prohibitions are listed.

legislation in all cases in which general laws can be made applicable. Particular attention should be given to the second clause of the first sentence, which makes the question of the possibility of applying a general law a question to be decided by the courts rather than by the legislature.

SOURCE—*General Laws of the State of Minnesota*, 1893 (St. Paul, 1893), 3.

ARTICLE IV.

. . . .

SEC. 33. In all cases when a general law can be made applicable, no special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on the subject. The legislature shall pass no local or special law regulating the affairs of, or incorporating, erecting or changing the lines of, any county, city, village, township, ward or school district, or creating the offices, or prescribing the powers and duties of the officers of, or fixing or relating to the compensation, salary or fees of the same, or the mode of election or appointment thereto, authorizing the laying out, opening, altering, vacating or maintaining roads, highways, streets or alleys; . . .

46. Constitution of New York, 1894.

This constitution provided an interesting expedient for avoiding the evils and retaining the advantages of special legislation. It provides in general that special acts (that is, acts relating to less than all the cities of a class) shall be submitted to the authorities of the city, whose veto is final unless the legislature re-passes the act at the same session. It should be noted that since the city is given fifteen days in which to return the bill, it has a pocket veto of all special acts relating to it and passed within the last fifteen days of a session.

SOURCE—*Revised Record of the Constitutional Convention of the State of New York*, 1894 (Albany, 1900), V, 775-776.

ARTICLE XII

SECTION 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations.

§ 2. All cities are classified according to the latest state enumeration, as from time to time made, as follows: The first class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

In every city of the first class the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during

the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

§ 3. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

47. Constitution of Missouri, 1875.

This constitution contained the first provision for "home rule" charters. The privilege of making such charters was confined to St. Louis and cities of 100,000 inhabitants. At that time, St. Louis was the only city of 100,000 inhabitants in the state. Kansas City has since joined the privileged class. Both St. Louis and Kansas City have adopted home rule charters.

SOURCE—*New Constitution of the State of Missouri*, adopted in Convention Aug. 2, 1875 (Jefferson City, 1875), 29-30.

ARTICLE IX.

COUNTIES, CITIES AND TOWNS.

SECTION 16. Any city having a population of more than one hundred thousand inhabitants, may frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election; which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board or a majority of them. Within thirty days thereafter such proposed charter shall be submitted to the qualified voters of such city at a general or special election, and if four-sevenths of such qualified voters voting thereat, shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city and supersede any existing charter and amendments thereof. A duplicate certificate shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other, after being recorded in the office of the recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter so adopted may be amended by a proposal therefor, made by the law-making authorities of such city, published for at least thirty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the State.

SEC. 17. It shall be a feature of all such charters that they shall provide, among other things, for a mayor or chief magistrate, and two houses of legislation, one of which at least shall be elected by general ticket; and in submitting any such charter or amendment thereto to the qualified voters of such city, any alternative section or article may be presented for the choice of the voters, and may be voted on separately, and accepted or rejected sepa-

rately, without prejudice to other articles or sections of the charter or any amendment thereto.

48. Constitution of Michigan, 1908.

In contrast with the Missouri provision, the Michigan home rule provision is very brief and general. The Missouri provisions are self-executing. The Michigan provisions are not. It has been said that home rule in Michigan is dependent upon the pleasure of the legislature. This is true. It should be said, however, that the legislature has loyally carried out the provisions of the constitution by enacting an elaborate home rule act. Indeed, in no instance in which a home rule enabling act has been necessary has the legislature failed to enact it, except in Pennsylvania. The Pennsylvania home rule amendment, adopted in 1922, still remains a dead letter.

SOURCE—*Constitution of the State of Michigan*, Article VIII, in *Michigan Compiled Laws*, 1916 (Lansing, 1916), I, 235-236.

ARTICLE VIII

CITIES AND VILLAGES

SEC. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

SEC. 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the Constitution and general laws of this state.

SEC. 22. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety.

. . . .

49. Constitution of Ohio, 1912.

This is perhaps the strongest of the constitutional home rule provisions. The Ohio constitutional convention of 1912 wrote into the constitution the whole procedure necessary for the exercise of home rule powers. This may be criticised from the point of view of constitutional practice, but it has practical advantages.

SOURCE—*The Constitution of the State of Ohio*, as in force and effect January 1, 1922 (Columbus, 1922), 43-46.

Article XVIII.

SEC. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SEC. 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SEC. 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SEC. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance

shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SEC. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SEC. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SEC. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty days nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each

elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SEC. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

SEC. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

SEC. 11. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited shall in no case be levied for more than fifty per centum of the cost of such appropriation.

SEC. 12. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit

of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SEC. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books, and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SEC. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

50. Constitution of New York, 1923.

The local veto of special legislation provided by the constitution of 1894 never proved wholly satisfactory. The public did not recognize it as a substitute for municipal home rule. After many years of effort, a constitutional amendment was finally adopted in 1923, granting home rule powers to cities which, as in none of the previous home rule constitutional provisions except that of Oregon, might be exercised by the ordinary legislative body of the city. At the same time, the legislature was prohibited from passing any special law relating to the "property, affairs or government of cities". This phrase will, of course, require judicial interpretation. No one can tell in advance just how broad a scope the New York courts will allow to municipal home rule.

SOURCE—*Laws of the State of New York*, 1924 (Albany, 1924), 1225-1227.

ARTICLE XII.

. . . .

§ 2. The Legislature shall not pass any law relating to the property, affairs or government of cities, which shall be special or local either in its terms or in its effect, but shall act in relation to the property, affairs or government of any city only by general laws which shall in terms and in effect apply alike to all cities except on message from the Governor declaring that an emergency exists and the concurrent action of two-thirds of the members of each house of the Legislature.

§ 3. Every city shall have power to adopt and amend local laws not inconsistent with the Constitution and laws of the State, relating to the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of all officers and employees of the city, the transaction of its business, the incurring of its obligations, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property, the wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it, and the government and regulation of the conduct of its inhabitants and the protection of their property, safety and health. The Legislature shall, at its next session after this section shall become part of the Constitution, provide by general law for carrying into effect the provisions of this section.

§ 4. The provisions of this article shall not be deemed to restrict the power of the Legislature to enact laws relating to matters other than the property, affairs or government of cities.

§ 5. The Legislature may by general laws confer on cities such further powers of local legislation and administration as it may, from time to time, deem expedient.

§ 6.¹

§ 7. The provisions of this article shall not affect any existing provision of law; but all existing charters and other laws shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this article. Nothing in this article contained shall apply to or affect the maintenance, support, or administration of the public school systems in the several cities

¹ Elections in all cities shall be held in the November of the odd-numbered years, thus providing for a two-year term of all city officials, including judges and justices of inferior local courts.

of the State as required or provided by article nine of the Constitution.

51. Home Rule Law for New York, 1924.

This is the enabling act putting into effect the New York constitutional amendment of 1923.

SOURCE—*Laws of the State of New York*, 1924 (Albany, 1924), Chap. 363.

AN ACT enabling cities to adopt and amend local laws pursuant to article twelve of the constitution, constituting chapter seventy-six of the consolidated laws.

ARTICLE I.

SHORT TITLE; DEFINITIONS.

Section 1. **Short title.** This chapter shall be known as the "City Home Rule Law."

§ 2. **Definitions.** As said in this chapter, (1) the term "local law" means a law adopted pursuant to this chapter by the local legislative body of a city as constituted under section ten of this chapter or proposed by a charter commission and ratified by popular vote as provided in section twenty of this chapter; but does not include an ordinance of the board of aldermen, common council or council of a city, or the act or resolution of any other city board or body, adopted pursuant to authority reserved to it by section ten of this chapter or conferred upon it by local law; (2) the term "board of estimate and apportionment" means the board or body of a city, consisting of not less than five elective members, which now has or hereafter shall have the power and duty of preparing and submitting to the board of aldermen, common council or council of the city the annual budget or estimate of appropriations of the city; the term "clerk," if there be no officer so designated, means an officer exercising corresponding duties; the term "charter" means a state statute or local law, which establishes or continues the city as a municipal corporation or body politic and includes the fundamental provisions defining, extending or limiting its corporate powers or affecting the framework of its government; the term "new charter" means a charter which supersedes or repeals an existing charter in its entirety.

ARTICLE II.

LOCAL LEGISLATION.

§ 10. **Local legislative body.** There is hereby reserved to the board of aldermen, common council, council, board of estimate and apportionment, or other board or body in every city, which shall continue to have and exercise the same, all the rights, privileges, powers and jurisdiction now conferred on it by law until such rights, privileges, powers or jurisdiction shall, by local law or state statute, be abolished, transferred or changed. Subject to the foregoing provision and to such change as may hereafter be made by local law or state statute, the local legislative body of a city shall be the board of aldermen, common council, council, commission or other board or body now or hereafter vested by its charter or other law with jurisdiction to enact ordinances, and, if there be a board of estimate and apportionment, shall include such board of estimate and apportionment as a separate branch thereof. If a city officer be entitled to vote in both such branches, he shall be entitled to vote on the adoption of a local law only in the board of estimate and apportionment. If a local legislative body of a city consists of more than one branch, the local legislative body shall be known as the "municipal assembly" of such city.

§ 11. **Power of cities to adopt and amend local laws.** 1. The local legislative body of a city shall have power to adopt and amend local laws in relation to the property, affairs or government of the city relating to the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of all officers and employees of the city, the transaction of its business, the incurring of its obligations, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property, the wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it, the government and regulation of the conduct of its inhabitants and the protection of their property, safety and health.

2. In the exercise of such powers, the local legislative body of a city shall have power

a. To delegate to any local authority power, by rule, regula-

tion, resolution or ordinance, to provide for carrying into effect the provisions of any local law.

b. To provide for the enforcement of local laws by legal or equitable proceedings, to prescribe that violations thereof shall constitute misdemeanors and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments.

§ 12. **Effect of local law on acts of legislature.** 1. Any local law adopted pursuant to this chapter may specify any provision of an act of the legislature by reference to chapter number, year of enactment, title of statute section, subsection or subdivision, which provision relates to the subject matter of such local law and does not in terms and in effect apply alike to all cities, and which it is intended to supersede by such local law; and upon the taking effect of such local law, such provision of any such act of the legislature so specified shall cease to have any force or effect in such city.

2. No local law shall supersede any provision of any act of the legislature relating to the property, affairs or government of cities which provision in terms and in effect applies alike to all cities, nor any provision of an act of the legislature which provision relates to matters other than of property, affairs or government of cities, whether in terms and in effect applying alike to all cities or not, nor any provision of an act of the legislature enacted pursuant to article twelve of the constitution on an emergency message from the governor and by the concurrent action of two-thirds of the members of the legislature.

. . . .¹

§ 15. **Mandatory referendum.** A local law shall be submitted for the approval of the electors at the next general election in such city held not less than ninety days after the adoption thereof, and shall become operative as prescribed therein only when approved at such election by the affirmative vote of a majority of the qualified electors of such city voting upon the proposition; if it

1. Abolishes a branch of the local legislative body, or changes the form or composition of such body, or changes the voting power of any member thereof;

2. Changes the veto power of the mayor;

¹ Local laws are subject to veto by the mayor, in cities in which the approval of ordinances by the mayor is required by law, but may be repassed over the mayor's veto by a two-thirds vote (Section 14).

3. Changes the law of succession to the mayoralty;
4. Abolishes an elective office, or changes the method of removing an elective officer, or changes the term of or reduces the salary of an elective officer during his term of office;
5. Abolishes, transfers or curtails any power of an elective city officer, except for the purpose of transferring the power or duties of one branch of the local legislative body to the other, or to some other local authority;
6. Creates a new elective office;
7. Changes a provision of law relating to public utility franchises;
8. Changes a provision of law relating to the alienation or leasing of city property;
9. Changes a provision of law relating to the membership or terms of office of the civil service commission of the city;
10. Reduces the salary of a city officer or employee which has been fixed by a state statute, and approved by the vote of the qualified electors of such city;
11. Provides a new charter for such city.

§16. **Referendum on petition.** A local law, described in section seventeen, shall not take effect until at least sixty days after its adoption; nor until approved by the affirmative vote of a majority of the qualified electors of such city voting on a proposition for its approval if within sixty days after its adoption there be filed with the city clerk a petition signed and acknowledged by qualified electors of such city in number equal to at least fifteen per centum of the total number of votes cast for governor at the last gubernatorial election in such city, protesting against such local law. . . .

§ 17. **Local laws that are subject to referendum on petition.** A local law shall be subject to the provisions of the last preceding section, which

1. Dispenses with a provision of law requiring a public notice or hearing as a condition precedent to official action.
2. Changes a provision of law relating to public bidding, purchases or contracts.
3. Changes a provision of law relating to assessment for taxation or special assessments of property for improvements, or the exercise of the power of condemnation.
4. Changes a provision of law relating to the authorization or issuance of city bonds or other obligations.

5. Changes a provision of law relating to the auditing of the city's accounts.

6. Changes a provision of law relating to the maintenance or administration of a pension fund or retirement system in such city, in connection with the police or fire department of such city.

. . . .

§ 19. **Reconsideration of local law before submission to referendum.** At any time prior to the election at which a local law is to be submitted to the electors for approval, pursuant to this chapter, the local legislative body of the city, not later than fifteen days prior to the election, may reconsider its action thereon, and repeal such local law, whereupon the proposition for its approval shall not be submitted at such election, or, if submitted, the vote of the electors thereon shall be without effect.

§ 21. **New charter.** 1. A new charter may be adopted by the local legislative body pursuant to the provisions of this chapter, and subject to the procedure prescribed by this chapter. A new charter may also be adopted in any city pursuant to the provisions of this section. The local legislative body may adopt a local law providing for the submission to the electors of such city at a general election held in such city or at a special city election of the question: "Shall there be a commission to draft a new city charter?" Such election shall be held not less than ninety nor more than one hundred and twenty days after the adoption of such local law. Such local law shall fix the number of members of such commission and determine whether the members shall be elected or appointed, or partly elected and partly appointed. It shall also prescribe the manner of appointment of appointive members and whether elective members shall be elected by the city at large, or by districts to be described in such local law. The elective members of the commission, if any, shall be elected at the election at which the question is submitted. If the question be answered in the affirmative by a majority vote of the qualified electors of such city voting thereon, the members of the charter commission, appointed or elected thereto, shall be the charter commission of such city. The terms of office of the members of such commission shall cease upon the submission of such new charter to the electors.

2. In a city having a commission form of government, a local law for the creation of a commission to draft a new city charter also may be adopted in the following manner; Qualified electors of such city, in number equal to at least fifteen per centum of the

total number of votes cast for governor at the last gubernatorial election in such city, may file in the office of the city clerk a petition for the submission to the electors of such city at the next general election therein held not less than sixty days after the filing of such petition of a proposed local law for the creation of a commission to draft a new city charter for such city. Such proposed law shall fix the number of members of such commission, not exceeding seven, and shall either name such members or designate the city authority by which they shall be appointed. Such petition shall conform to the provision of section sixteen in relation to petitions, and objections thereto shall be disposed of by the supreme court as prescribed by such section. The city clerk shall transmit such proposed local law in the form in which it is to be submitted to the election officers charged with the duty of publishing the notice of such election. If such proposed local law receive the affirmative vote of a majority of the qualified electors of such city voting thereon, the members of the charter commission, named in such local law, or appointed as prescribed therein, shall be the charter commission of such city. The terms of office of the members of such commission shall cease upon the submission of such new charter to the electors.

3. The charter commission of a city created pursuant to this section shall prepare a draft of a new charter of such city. The proposed charter may contain such provisions or effect such results as may be made or affected by local law under the provisions of this chapter. Such new charter when completed shall be filed in the office of the city clerk. The local legislative body shall provide for such publication of other publicity in respect to the provisions of the proposed charter as it may deem proper, and for its submission to the electors of the city at a general election or at a special city election held in such city not less than ninety days after the filing thereof in the office of the city clerk. At such election there shall be submitted to the qualified electors of the city the question: "Shall the charter proposed by the charter commission be adopted?" If such question receive the affirmative vote of a majority of the qualified electors of such city voting thereon, the charter so proposed shall be the charter of such city, and shall become operative as prescribed therein. Such charter shall be a local law of such city within the meaning of this chapter.

§ 21. **Restriction on city legislation.** Notwithstanding any provision of this chapter, the local legislative body of a city shall

not be deemed authorized by this chapter to adopt a local law, which supersedes a state statute now in force or hereafter enacted by the legislature, if such local law

1. Removes or raises any limitation of law on the amount in which the city may become indebted, or on the amount to be raised in any one year by tax for city purposes, or for any city purpose;

2. Removes restrictions of law as to issuing bonds or other evidences of debt;

3. Applies to or affects the maintenance, supports or administration of the educational system in such city, or a teacher's pension or retirement system in such city;

4. Changes the number or term of office of the members of the county board of supervisors chosen as such in such city under the official title of supervisors.

5. Applies to or affects any provision of the labor law or the workmen's compensation law.

6. Changes any provision of the tenement house law.

7. Applies to or affects existing powers of the state comptroller in relation to auditing or examining municipal accounts or prescribing forms of municipal accounting.

8. Applies to or affects any provision of law providing for regulation or elimination of railroad crossings at grade or terminal facilities within the city.

9. Applies to or affects any provision of law relating to the property, affairs or government of a county or counties.

§ 22. **Filing and publication of local laws.** Within three days after the taking effect of a local law, the city clerk, or other officer designated by the local legislative body, shall file a certified copy thereof in the office of the secretary of state. Such local laws shall be published annually in a separate volume as a supplement to the session laws.

. . . .

52. Scope of Home Rule Powers in Ohio, 1925.

The Ohio courts have been extremely liberal in construing the constitution of that state in favor of the exercise of home rule powers by cities. The case of *Lorain Street Railroad Company v. Public Utilities Commission* raised the question of the right of the Public Utilities Commission to invalidate a city ordinance which it considered to be in

conflict with its jurisdiction. The majority of the court decided that there was no conflict of jurisdiction and that therefore the ordinance should stand. The minority of the court concurred in the judgment, but not in the reasons assigned by the majority of four judges. The opinion of the minority of three judges very carefully reviews the previous Ohio decisions on the subject of home rule.

SOURCE—*Lorain Street Railroad Co. v. Public Utilities Commission*, 113 Ohio State, 1925; 148 Northeastern, 577.

PER CURIAM. The chief controversy in this case turns upon the construction to be given section 614-86, General Code (110 Ohio Laws, 214). An analysis thereof shows that the Commission is clothed with power and authority to do the following things: (1) Supervise and regulate motor transportation companies; (2) fix, alter, and regulate rates; (3) regulate service and safety of operation; (4) prescribe safety regulations and designate stops for service and safety on established routes; (5) require the filing of reports; (6) provide uniform accounting systems; (7) supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public. And by the terms of said section the power of municipalities to make reasonable local police regulations within their respective boundaries is recognized. Therefore the court is of opinion that, if the municipality does not interfere with the general powers of the Public Utilities Commission, it may, by suitable police regulations, control, direct, and manage its streets and the traffic thereon, and the conclusion reached is that these ordinances are not an unreasonable local police regulation relating to traffic, reciting as they do that it is intended to make the streets less congested and less dangerous to pedestrians and the public generally, and may be so enforced as not to materially lessen the efficiency of the utility. Of course, under the guise of so regulating traffic, a city may not materially interfere with the general efficiency of the utility authorized by the Public Utilities Commission within its jurisdiction.

These two powers, one of the state through the Commission, and the other of the municipality in the control of its streets, should be exercised together and consistently, and under the statute and under the Constitution this joint exercise of power is recognized, and no conflict should be permitted to arise which would lessen the

sovereign power of the state and still preserve proper local self-government.

Since this action was begun, the Legislature has simplified the problem by further legislation, but the same can have no bearing in this action.

Entertaining the view that the ordinances of the city of Lorain are regulatory in character, and are reasonable police regulations which may be enforced so as not to materially lessen the efficiency of the utility sanctioned by the Commission, it is unnecessary to discuss other features of the case. It is therefore ordered that the findings of the Commission be reversed and the same remanded to the Commission for further modification, alteration, and amendment of their orders in accordance with this opinion.

Order reversed.

JONES, MATTHIAS, DAY, and ROBINSON, JJ., concur.

MARSHALL, C. J., and ALLEN and KINKADE, JJ., concur in the judgment, but not in the reasons stated in the *per curiam* opinion.

MARSHALL, C. J. (concurring). The judgment in this case reverses the order of the Public Utilities Commission and causes an ordinance of the city of Lorain, which is in conflict with the order of the Commission, to prevail over the Commission's order, and the minority of this court fully concur in that judgment, but wholly disagree with the majority upon the reasons by which it is adjudged that the ordinance has paramount force and effect. There would be no disagreement with the *per curiam* opinion, which is concurred in by four members of the court, if no question were made as to the source of power on the part of the municipality. We are not able to agree with the opinion in its entirety, because of the limitations placed upon the power of the municipality. The effect of the decision is therefore to make every ordinance of a municipality affecting the control and regulation of traffic upon its streets subject to such limitations as may be sought to be imposed by the Public Utilities Commission, and, in the event of conflict, to submit to the Supreme Court of the state as a justiciable question whether the ordinance is a reasonable police regulation.

While we agree that municipalities have the power to pass ordinances providing reasonable police regulation of traffic upon their streets, we emphatically disagree that any such ordinances,

under any circumstances, can be rendered nugatory by any order of the Public Utilities Commission. We are compelled to register an emphatic protest, because in the absence of such a protest every word of the *per curiam* opinion would become the established law of this state and an authority proper to be cited in other controversies affecting the power of municipalities over regulation of street traffic.

We take issue with the first sentence of the *per curiam* opinion, to the effect that this controversy turns upon the construction to be given section 614-86, Gen. Code. That section is a part of the motor transportation Code recently adopted by the Legislature to regulate motor transportation throughout the state. 110 Ohio Laws, 211. It is true that that Code confers certain power and authority upon the Commission in the matter of regulating service, fixing rates, and issuing certificates of convenience and necessity, which certificates are equivalent to licenses. It was realized by the General Assembly that by virtue of Section 3, Article 18, of the Constitution, giving to municipalities all powers of local self-government, the Legislature had no power to confer authority upon the Public Utilities Commission to license the use of motor vehicles upon the streets of municipalities, contrary to the wish and will of municipal authorities.

The constitutional amendment above referred to must be conceded to be paramount over any legislative enactment. It is proper to add that the succeeding session of the General Assembly removed all doubt upon this point by expressly taking away from the Commission any power over the regulation of motor traffic within municipal corporations and expressly recognized the unlimited power of such regulation to be in the municipalities.

No reference is made in the majority opinion to the provisions of the ordinance of the city of Lorain, which are the subject-matter of this controversy. That ordinance is one controlling traffic upon some of its most congested streets, and the preamble to the ordinance, as well as the ordinance itself, recites the existence of congestion, and that transportation service being rendered by street car lines on those streets will be impaired and made less efficient to the inhabitants and the public, unless certain restrictions are made with reference to the operation and control of jitney bus service on those streets, and that by reason of the enactment of the ordinance and the enforcement of its provisions the street railroad company will be induced to expend a large amount of money

for new construction and extensions of its service within the limits of said city of Lorain. It further clearly recites that the unnecessary congestion of traffic on those streets and avenues by reason of the public bus service tends to make the same dangerous to the public generally and a menace to the lives of the citizens of the municipality. The effect of the majority pronouncement is to give the Public Utilities Commission a measure of power over municipalities which may not be contravened by municipal legislation, and the only protection a municipality will have under that pronouncement is to prosecute error to this court and obtain the judgment of this court upon the reasonableness and lawfulness of the order of the Commission. The majority pronouncement, therefore, holds in effect that the Public Utilities Commission is better able to judge of the safety of traffic conditions upon congested streets of municipalities than the constituted authorities of the municipalities respectively. It further holds in effect that this court is better able to judge of the reasonableness of such an order of the Commission than the municipal authorities themselves. The deplorable character of this pronouncement more clearly appears when it is pointed out that this court will not interfere with an order of the Commission in such matters, unless it affirmatively appears that the Commission's order is so manifestly contrary to the evidence adduced as to indicate bias and prejudice. This has been repeatedly held by this court. *Village of St. Clairsville v. Public Utilities Commission*, 102 Ohio St. 574, 132 N. E. 151; *Ohio Utilities Co. v. Public Utilities Commission*, 108 Ohio St. 143, 140 N. E. 497, and again quite recently in *Cincinnati Traction Co. v. Public Utilities Commission*, 148 N. E. 921, decided May 19, 1925, not yet officially reported.

It was the opinion of the Constitution framers in 1912 that in matters of local self-government the municipal authorities were better able to judge of local conditions than state authorities, and that was recognized by the Legislature in the enactment of the motor transportation Code, but this has all been reversed by the very brief, even sententious, declaration of this court. It must be clearly kept in mind that this controversy relates to an effort on the part of a city to regulate traffic upon one or more of its principal streets, for the purpose of guarding the lives of its inhabitants from the ever-increasing dangers of motor traffic. It is reported that in 1924 there were 19,000 deaths in the United States due to careless operation of motor vehicles, and that during the

same year there were approximately 475,000 persons who received injuries not resulting in death. The comparison with the year 1923 shows that conditions are rapidly growing worse. The number of motor vehicles increases year by year, the seventeen million mark has been passed in the United States. This fact, added to the rapid growth of the cities in population, has caused the congestion of traffic to present an ever-increasing problem. Traffic rules and regulations which would have been safe 20 years ago have to-day become impossible. If full responsibility for the dangers of the increased congestion could be charged against the Public Utilities Commission, and through it against the state of Ohio, there might be some measure of justification for a declaration that the Commission has power and authority paramount over that of the municipalities. The brief majority opinion evidently loses sight entirely of the fact that Section 3714, General Code, is still in full force and effect, and that, on the one hand, it gives to municipalities special power to regulate the use of streets and confers upon municipal council the care, supervision, and control of all public ways within such corporations, and, on the other hand, requires them to be kept open, in repair, and free from nuisance. A very large part of the volume of litigation in the trial courts of the state relates to the liability of municipalities for neglect of the duties and liabilities imposed by Section 3714. The injustice of charging upon municipalities such duties and liabilities and, at the same time, by judicial pronouncement, rendering them helpless to remedy dangerous conditions, must be apparent to the most casual reader of the majority opinion.

Section 3632, General Code, has apparently been entirely lost sight of; this section conferring upon municipalities the authority to regulate the use of all vehicles, including motor vehicles, upon the streets and avenues of cities. That section was not repealed at the time of the enactment of the motor transportation Code.

Even if we should ignore entirely the provisions of Section 3, Article 18, of the Constitution, as the majority of this court seem determined to do, and even if local self-government is to be entirely relegated to the scrap heap, it is impossible to understand how the majority of this court are able to explain the utter disregard of sections 3714 and 3632, General Code, which must in any event be construed *in pari materia* with the motor transportation Code. It is quite significant that the majority opinion does not even attempt to explain. The majority opinion would render entirely nugatory

many salutary provisions of municipal ordinances which make provision for "one way traffic" and "no left turn," and many other important regulations which have been found necessary in the larger cities of the state. Municipalities must have a wide latitude, not only in determining the needs of their citizens and the public in the matter of transportation facilities, but also in selecting and controlling the character and quality of the transportation service within their boundaries. This court has frequently declared ordinances of cities to be invalid, but in no case prior to this time has it been declared that the Legislature may give power to the Public Utilities Commission, or any other board created by legislation, with purely administrative duties, to impose regulations upon a municipality contrary to its ordinances. A very clear expression of the paramount power of municipalities is found in *Allion v. City of Toledo*, 99 Ohio St. 416, 124 N. E. 237, 6 A.L.R. 426. In that case the opinion of Jones, J., quoted with approval language found in the opinion of *Schmidinger v. City of Chicago*, 226 U. S. 578, 33 S. Ct. 182, 57 L. Ed. 364, Ann. Cas. 1914B, 284, as follows:

"Local legislative authorities, and not the courts, are primarily the judges of the necessities of local situations calling for police regulation, and the courts can only interfere when such regulation arbitrarily exceeds a reasonable exercise of authority."

The syllabus of the *Allion* Case, in which all judges concurred, is equally clear and conclusive:

"Unless there is a clear and palpable abuse of power, a court will not substitute its judgment for legislative discretion. *Local authorities are presumed to be familiar with local conditions and to know the needs of the community.*"

There has been a tendency on the part of this court for several years to render meaningless that part of Section 3, Article 18, of the Constitution, which confers upon municipalities all powers of local self-government, and this decision has fully completed the process and has left nothing more to be desired by the opponents of municipal home rule.

This challenge of municipal home rule, as provided in Section 3, Article 18, of the Constitution, calls for a discussion of the much-debated question as to what is meant by and what is included within the language in the first part of the section, to wit, "authority to exercise all powers of local self-government" and what is meant by and what is included within the latter part of the section, to

wit, "to adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with general laws."

Numerous cases have been decided by this court since 1912, involving an interpretation of this section, and, while it is clear that "local police, sanitary and other similar regulations" can only be valid when not in conflict with general laws, there has been a difficulty in determining whether a given ordinance relates to "powers of local self-government," or to "local police, sanitary, and other similar regulations." A discussion of the distinction is found in a very clear opinion of Donahue, J., in *Cleveland Telephone Co. v. City of Cleveland*, 98 Ohio St. 358, at page 377, 121 N. E. 701, and in the opinion in *Billings v. Cleveland Ry. Co.*, 92 Ohio St. 478, 111 N. E. 155; and also in *Froelich v. City of Cleveland*, 99 Ohio St. 376, 124 N. E. 212. These cases and others which will hereafter be noticed have settled the proposition that there are some powers of local self-government which may be exercised by municipalities, regardless of conflict with general laws. While this court has never declared in a single case any definite rule for determining which powers and functions of municipalities may be classed as local self-government, a survey of the cases which have been decided by this court does state lines of distinction from which a rule can be evolved. *Fitzgerald v. City of Cleveland*, 88 Ohio St. 338, 103 N. E. 512, Ann. Cas. 1915B, 106; *State Board of Health v. City of Greenville*, 86 Ohio St. 1, 98 N. E. 1019, Ann. Cas. 1913D, 52; *Williams v. Scudder*, 102 Ohio St. 305, 131 N. E. 481; *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N. E. 519; *State ex rel. Lentz v. Edwards*, 90 Ohio St. 305, 107 N. E. 768; *State ex rel. v. French*, 96 Ohio St. 172, 117 N. E. 173, Ann. Cas. 1918C, 896; *State ex rel. Hile v. Baker*, 92 Ohio St. 506, 112 N. E. 1086; *Hile, Taxpayer, v. City of Cleveland*, 107 Ohio St. 114, 141 N. E. 35; *State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. 339, 126 N. E. 309.

The line of distinction running through the foregoing cases is that matters of health and public schools are matters of general governmental cognizance, not to be affected by special local regulations, and, on the other hand, that those matters which relate to the internal government of a municipality, such as local elections of municipal officers and the powers, duties, and functions of such municipal officers, are matters of local self-government, which may not be influenced or controlled by general laws.

In addition to the foregoing cases there are others which should receive more extended discussion. In the case of *Billings v. Cleveland Ry. Co.*, 92 Ohio St. 478, 111 N. E. 155, the charter provisions of Cleveland were held paramount to sections 3777 and 9105, General Code, and that it was therefore not necessary to procure consents of abutting property owners in granting street franchises to street railroads. The effect of that decision was to place the laws and ordinances of the city beyond the control of the laws of the state in the matter of the use and occupancy of streets of a city by public utility, and in that respect the case involves a parallel principle to that decided in the instant case. The *per curiam* of the majority, must therefore be held to have overruled the *Billings* Case, without any mention of it.

A more direct decision of the point involved in the instant case is *Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N. E. 595, in which it was declared, in the second syllabus:

“The power to establish, open, improve, maintain, and repair public streets within the municipality, and *fully control the use of them*, is included within the term ‘powers of local self-government.’ ”

This decision was concurred in by Marshall, C. J., and Wana-maker, Day, and Allen, JJ.

The same proposition was again declared in *Murphy v. City of Toledo* and *Harding v. City of Bowling Green*, 108 Ohio St. 342, 140 N. E. 626. The syllabus in those cases is as follows:

“1. Municipalities have full power to regulate or control the use of their own streets.

“2. In such control or regulation a municipality may make any reasonable classification of vehicular traffic in the use of its streets.

“3. The judgment of a legislative body as to a reasonable classification cannot be questioned, except when it is in clear conflict with some express provision of state or federal Constitution.”

In the case of *Froelich v. City of Cleveland*, 99 Ohio St. 376, 124 N. E. 212, the following syllabus was pronounced:

“1. In the construction of a section of the Constitution, the whole section should be construed together, and effect given to every part and sentence. One part must not be allowed to defeat another, if by any reasonable construction the two can be made to stand together.

“2. When a city has adopted a charter, under which it is

authorized to exercise 'all powers of local self-government,' pursuant to the provisions of Sections 3 and 7 of Article 18 of the Constitution, the authority to locate, establish and protect the streets within its limits resides in the municipality, and it may adopt and enforce such reasonable regulations for their proper and economic use as it deems to be proper. It may regulate the weight of loads and the width of tires of vehicles passing over the streets. It derives this authority, not by grant from the Legislature, but under express authority from the people of the state given in the Constitution.

"3. The state and municipalities may make all reasonable, necessary, and appropriate provisions to promote the health, morals, peace and welfare, of the community. But neither the state nor a municipality may make any regulations which are unreasonable. The means adopted must be suitable to the end in view, must be impartial in operation and not unduly oppressive upon individuals, must have a real and substantial relation to their purpose, and must not interfere with private rights beyond the necessities of the situation."

This was concurred in by Nichols, C. J., and Johnson, Matthias, Wanamaker, and Robinson, JJ.

All of the foregoing cases last referred to and discussed relate to the use and regulation of vehicular traffic, and more especially motor traffic, upon the streets of municipalities, and clearly hold that municipal regulation and control are not subject to the general laws of the state, and the opinion pronounced by the majority in the instant case must therefore be held to be in clear conflict with each and all of those decisions. It would seem that they should not be overruled by a brief *per curiam*, which does not attempt to distinguish them or to overrule their pronouncements. The lengthy, well-reasoned opinions in each and all of those cases should not be thrown into the discard with no effort whatever to counteract their logic. An absence of discussion of those cases in the *per curiam* in the instant case leaves this question in a chaotic state.

The *per curiam* opinion enumerates the powers sought to be conferred upon the Public Utilities Commission by section 614-86, General Code, and we find no fault with that analysis, except in the seventh paragraph thereof, in which it is stated that by virtue of that section the municipality is authorized to make local police regulations, thereby intimating that it is only by virtue of that

section that municipalities have the power to exercise control over their streets in the matter of bus transportation.

53. Initiative Petition for Charter Revision and Proceedings of the City Commission of Port Huron, Michigan, thereon, 1922.

This extract illustrates the procedure followed in initiating home rule charter proceedings by petition. Under the Michigan home rule act the council might have called the election of charter commissioners on its own authority. Such an alternative is usually provided in home rule constitutional provisions.

SOURCE—Port Huron, Mich., City Commission, *Proceedings*, August 15, 1922.

TO THE CITY CLERK OF PORT HURON, MICHIGAN.

The undersigned, duly qualified and registered electors of the City of Port Huron, do hereby petition for a general revision of the Charter of said city and the election of a charter commission to consist of nine members for the purpose of preparing for submission to the electors of the city a revised charter of the city; the members of this commission to be selected at the same election at which the proposition to revise the charter is submitted to the electors; such selection to be void if the proposition to revise is not adopted.

The Kiwanis club of Port Huron is primarily interested in and responsible for the circulation of this petition. . . .¹

Dated August 12th 1922.

By Mayor French and Commissioners Buckeridge, Green, Rathfon and Whitmore:

Whereas, it is evident that a large number of voters desire a revision of the present city charter.

And, whereas the members of the city commission believe that said charter should be revised and that the necessary legal steps should be taken to make it possible to secure a revision.

Be it therefore resolved that the petition signed by the neces-

¹Signed by several hundred names, together with affidavits attached to the petitions.

sary qualified and registered electors of the city asking for a general charter revision, which has been filed with the city clerk, be given favorable consideration and that the prayer therein prayed for be granted and that the question of a general revision of said charter be submitted to the electors of the City of Port Huron at the regular election to be held on the 7th day of November, A. D. 1922.

Be it further resolved that at the same time charter commissioners shall be elected, consisting of nine electors of said city, having a residence of at least three years in the municipality.

Be it further resolved that the nomination petitions for such charter commissioners shall be filed with the city clerk up to and including the 28th day of October, 1922, at four o'clock in the afternoon, such petitions to be signed by a number of qualified electors of the city equal to not less than two per centum and not more than four per centum of the total vote cast for the mayor or the highest cast for any commissioner at the last preceding election.

Be it further resolved that the names of all candidates for charter commissioners be placed upon a separate and distinct ballot.

Be it further resolved that the nine candidates having the largest number of votes shall be declared elected providing the proposition to revise the charter is adopted by the electors of the City of Port Huron.

Be it further resolved that in the event of the election of said charter commissioners, the said commission shall hold its meetings in the common council room in the city hall.

Be it further resolved that the compensation of the members of said commission shall be the sum of one dollar per meeting for meetings actually attended by said commissioners and be it also resolved that the sum of five hundred dollars additional be voted to cover the expenses of said charter commission.

Be it further resolved that the city clerk be instructed and directed to prepare the necessary ballots to carry out the spirit and intent of this resolution.

Adopted, Aug. 15th 1922.

54. Liability of a Municipal Corporation for Injuries Inflicted by its Officers or Employees.

The following four cases have been selected to illustrate various aspects of the liability of a municipal corporation

for injuries inflicted by its officers or employees. The general rule is that municipalities are not liable for the acts of their officers and employees committed in the performance of what are called governmental functions, but that they are so liable for acts committed in the performance of ministerial or corporate functions. The difficulty is to draw the line between those functions which are governmental and those which relate to what may be regarded as the private or business capacity of the city. Upon this point these cases will throw some light.

SOURCE—*Fowler, Admx., v. The City of Cleveland*, 100 *Ohio State* (1919), 158; *Cornelius McDade v. City of Chester*, 117 *Pennsylvania State* (1888), 414; *Johnston v. District of Columbia*, 118 *United States* (1885), 19; *Edward C. Craig v. The City of Charleston*, 180 *Illinois* (1899), 154.

FOWLER, ADMX., V. THE CITY OF CLEVELAND.

ERROR to the Court of Appeals of Cuyahoga county.

This was an action by the administratrix to recover damages for injuries wrongfully inflicted upon W. H. Fowler, from which he died.

The deceased was going northerly on the east side of Ontario street in the city of Cleveland and was at the intersection of the street with the southerly side of the public square. While on the easterly cross walk he was struck and run over by a motor hose-truck belonging to the city, which was returning to its station in that neighborhood.

The petition alleged that it was driven in a reckless and negligent manner diagonally from the northeast, cutting the corner sharply at a high rate of speed, without warning, and on the wrong side of the street.

The common pleas court sustained a demurrer to the petition on the ground that the city was not liable for the negligent driving of the hose-truck operated by a member of the city fire department while in performance of his duties. The petition was dismissed, this judgment was sustained by the court of appeals, and error is prosecuted here. . . .

JOHNSON, J. The petition sets forth with great detail the alleged negligent acts of the defendant in the operation of the truck on the public street at the time of the injury. It states an

undoubted cause of action if alleged against any defendant corporation liable for the acts of its servants in charge of such a vehicle.

The trial court entertained the view that the case was ruled by *Frederick, Admr., v. City of Columbus*, 58 Ohio St., 538, and it is conceded that if that case is not now reversed or modified the judgments of the courts below should be affirmed.

The syllabus in that case lays down the following proposition: "A municipal corporation is not, in the absence of any statutory provision, liable in damages to one injured by the negligent acts of its fire department, or any of its members."

The conclusion was arrived at in obedience to a principle long embedded in our jurisprudence, and generally enforced, that no liability attached to the sovereignty, or any of its subdivisions, in the exercise of any governmental function.

The rule has been followed by the courts of England and this country with some variations for a long period of time. It would not be profitable to cite or examine the cases in detail.

In the opinion in the *Frederick* case a fair statement is made of the reasons of the rule as applied to fire departments, viz: "The ground on which the non-liability of municipal corporations is placed in such cases, is that the power conferred on them to establish a department for the protection of the property of its citizens from fire, is of a public or governmental nature, and liability for negligence in its performance does not attach to the municipality unless imposed by statute. The non-liability of the city in such cases rests upon the same reasons as does that of the sovereign exercising like powers; and are distinguished from those cases in which powers are conferred on cities for the improvement of their own territory and the property of their citizens." Recognizing the existence of the distinction referred to, and the liability of the cities in the latter class of cases, the court remarked at page 549: "It is not always a simple matter to determine to which class of the duties of a municipal corporation a given case belongs."

We think it may be fairly said that there has been a growing dissatisfaction with any comprehensive rule (and its unsatisfactory and unjust results) which exempts municipalities from liability for all acts which have loosely been classed as governmental.

In England a distinction was long ago made in the maritime law, and the general rule was denied application in maritime cases;

but the reasons and logic upon which the distinction was made are not so satisfying or clear as those upon which the criticism of the rule itself is based.

The distinction, however, was recognized in *Workman v. New York City*, 179 U. S. 552, where the city was held liable by maritime law for the negligence of its servants in charge of a fireboat while hastening to put out a fire raging at the head of a dock, in consequence of which the fireboat collided with and injured another vessel. The federal supreme court reversed the judgment of the United States court of appeals, which had held the city to be exempt from liability under the general rule to which we have referred. The court in holding that the rule did not apply, in maritime law at least, say at page 573: "Because we conclude that the rule of the local law in the State of New York—conceding it to be as held by the Circuit Court of Appeals—does not control the maritime law, and, therefore, affords no ground for sustaining the non-liability of the city of New York in the case at bar, we must not be understood as conceding the correctness of the doctrine by which a municipal corporation, as to the discharge of its administrative duties, is treated as having two distinct capacities, the one private or corporate, and the other governmental or sovereign, in which latter it may inflict a direct and positive wrong upon the person or property of a citizen without power in the courts to afford redress from such wrong * * * And although this opinion is confined to the controlling effect of the admiralty law, we do not intend to intimate the belief that the common law which benignly above all considers the rights of the individual, yet gives its sanction to a principle which denies the duty of courts to protect the rights of the individual in a case where they have jurisdiction to do so."

The United States court of appeals in *New York City v. Workman*, 35 U. S. App. 201, 204, which was reversed by the United States supreme court, *supra*, concisely set forth the general rule and the reasons for it, viz.: "It is familiar law that the officers selected by a municipal corporation to perform a public service for the general welfare of the inhabitants or the community, in which the corporation has no private interest, and from which it derives no special benefit or advantage in its corporate capacity, are not to be regarded as the servants or agents of the municipality, and for their negligence or want of skill it cannot be held liable. * * * The duties intrusted to them do not relate to the exercise of cor-

porate powers; and hence they are the agents or servants of the public at large. * * * The test of corporate liability for the acts of the officers of the municipality depends upon the nature of the duties with which they are charged; if these, being for the general good of the public as individual citizens, are governmental, they act for the State. If they are those which primarily and legitimately devolve upon the municipality itself, they are its agents."

The line of demarcation between acts which are termed governmental, and those which are ministerial or proprietary, done in the performance of a corporate function, has not been accurately defined in cases where the liability of a municipality was involved. It is of course everywhere recognized that the exercise of the legislative will is governmental. The power to determine whether certain steps shall be taken in the interest of the public welfare is governmental, and the exercise and expression of the discretion as to the kind of steps and the extent of them is governmental. But a municipal corporation is a vastly different thing now from what it was in the early days. Then its function was very largely expressed in the exercise, as a political subdivision, of the delegated and limited powers of sovereignty. It was a favorite maxim of the early times in this country that that government is best which governs least, and the authority of the federal government to make internal improvements was long contested. It was the natural expression of protest against the ancient idea that the sovereign was the active and all-pervading influence, and that the duty of the people was to exalt the sovereignty.

Now, the activities and undertakings of a municipal corporation are manifold. They reach and touch in countless directions. It seems to be utterly unreasonable that all these activities and enterprises which are brought closely home to the lives of all of the people of the municipality must still be regarded as bound up in the vague and uncertain sphere of what is called a governmental function.

In the early days protection against fire was provided by voluntary fire departments. All of the necessities of the people were supplied and taken care of by private citizens and by companies.

The revolutionary change has been brought about by the advent of new conditions, changes in the means of communication and in the entire method of supplying the wants of the community; so that a municipal corporation has now come to be a dual entity. It is no longer a mere subdivision for the expression of the sovereign will

in the particular locality, but it has entered the field and does the things that were formerly done by private persons in the manner referred to.

A modern city may be said to be a great public service corporation, and no reason is apparent, why, in the respects in which it entrusts purely ministerial duties to agents and employes, it should not be subject to the liabilities of such persons and companies. When the government acts itself, as for instance in the taking of the property of a citizen, the constitution itself prescribes the proceeding by which the government acts and under which the government acts and under which the citizens is safeguarded. No injury is done the citizen, for he held his property always subservient to the public welfare.

Now, in this case, it was stated that the proof would have shown that the motor truck was returning to its station when it was recklessly driven over the decedent, who was without fault. It would of course be conceded that if the truck had been owned by and driven by the servant of a private corporation the liability would be fixed, and it is difficult to understand the justice of a rule which denies to a citizen the protection of the law and the remedy guaranteed by the constitution when injury is thus done him by the servant of a city instead of a servant of a private corporation. It would seem to be clearly a case in which the reason of the rule having failed the rule itself should be set aside as to such injuries.

It would of course be admitted the municipality was under no obligation to provide any fire department, and that the matter of deciding whether it should have a fire department, and, if so, what sort, and the extent of the services that the city would render on the general subject, is governmental. No complaint could be made concerning the exercise of that governmental power. But when it has determined all of these matters, and has placed an instrument upon its streets, which, when negligently and carelessly operated, is dangerous to the lives of its citizens, then the operation of this dangerous instrument, while governmental, as being operated by the government for the public welfare, yet is ministerial and proprietary. It is performed by agents who as such have no part in the decision or determination of the sovereign will. Their relation is precisely the same as the agent of a private person. When the functions of government were negative rather than positive the results of non-liability for any and every act did not attract close attention or inquiry. To adhere to the ancient rule

in the presence of existing relations would seem to involve the obvious contradiction that the state, which is formed to protect society, is under no obligation, when acting itself, to protect an individual member of society. Such conceptions of sovereign prerogative are not only illogical, but they offend the spirit of our institutions. We have successfully striven under a system of checks and balances to reconcile liberty with authority. Authority should be reconciled with justice.

In many ways the legislation and the decisions of the courts of the country have recognized these altered conditions. For instance the duty to keep the streets open, in repair and free from nuisance has been made statutory, and the liability of municipalities for failure to comply with this statutory requirement has been generally enforced. Likewise the liability of a city for negligence in the construction of improvements on its own property has been enforced in most jurisdictions.

The general assembly of Ohio has, by statute, created a liability against a county to persons injured by mob violence. In Ohio it has been provided by statute that each municipality shall be a body politic and corporate. Provision is made for the use of a seal, that it may sue and be sued and acquire property by purchase, gift, etc., and by Section 4 of Article XVIII of the Constitution, adopted September, 1912, full power has been conferred upon a municipality to "acquire, construct, own, lease and operate, within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants," and likewise power has been conferred upon it to contract with others for any such product or service. So that it is apparent that the municipality has become a body corporate, as well as a body politic. The provision that it may sue and be sued does not create any new liability. But the conception of public policy under which the municipality as a subdivision of the sovereign power could not be sued has long been abrogated. . . .

While it is perhaps true that the rule of exemption of the sovereignty, as originally declared in England, has its genesis in the maxim that the "King can do no wrong," and that in a general way that rule was adopted and applied to declare the exemption of the government in this country, yet, as already stated, there was a very early disposition to draw a distinction between governmental and corporate functions and to hold municipalities liable for negligence in the performance of the latter. It must be noted

that the courts of this state have repeatedly declared that they will adopt the principles of the common law only so far as those principles are adapted to our circumstances, state of society and form of government.

We think it may be said that the reason why the courts have been slow to declare and enforce a rule of liability against municipalities in the working of the new relationship which they have assumed is because they have felt the difficulty, in the presence of the manifold angles of the situation, of accurately defining a line between what is governmental and what is ministerial or corporate. In fact much of the difficulty is because of the persistence of antiquated and outworn terminology. Where a municipality (whether termed a governmental agency or a body corporate) with the sanction of the state has assumed the performance of a work or industry or enterprise formerly carried on by the citizenship, that of itself, so far as its practical operation is concerned, stamps it as a corporate or ministerial work. So far as this case is concerned the facts sufficiently show the distinction referred to, and it must be remembered that the liability in any case could only arise where there was a duty to exercise care towards the public and towards the injured person under the circumstances of the particular case, and where there was a wrongful violation of that duty by an act which was the proximate cause of the injury to the plaintiff who must himself have been without fault.

The emergency of fire and the excitement attendant upon it, the necessity for haste, the duty of extra caution on the part of bystanders, or those passing in the neighborhood, and similar circumstances, are all elements to be considered in determining whether or not there was actionable negligence in the situation. If, for example, a motor truck was returning from a fire, a very different situation would be presented for the consideration of the trial court and the jury from one in which it was hurrying to a fire.

It is not the policy of government to indemnify persons for loss either from lack of proper laws or administrative provisions, or from inadequate enforcement of laws, or the inefficient administration of provisions which have been made for the protection of persons and property. The unwisdom and impracticability of such a system are easily apparent. But we hold that where a wrongful act, which has caused injury, was performed by the servants of a municipality in the performance of a purely minis-

terial act, which was the proximate cause of the injury, without fault on the part of the injured person, the municipality is liable, and the fact that it derives no pecuniary profit from the thing done does not change the rule. The application of the ordinary rules for the determination of liability in similar cases will sufficiently safeguard the public corporation, and the enforcement of the rule we have declared will doubtless induce greater caution for the protection of individuals.

For these reasons the *Frederick case* is overruled and the judgments below will be reversed.

Judgments reversed.

NICHOLS, C. J., MATTHIAS, DONAHUE and ROBINSON, JJ., concur.

WANAMAKER, J., concurring. I heartily agree with the majority in the soundness of this judgment. I as heartily disagree upon the grounds of the judgment. . . .

I complain, however, of the majority opinion chiefly upon the ground that it is predicated upon the claim that the act of the municipal corporation pleaded as negligence was a "ministerial act." I cannot quite regard the act of a fire department, a water-works department, a police department, a health department, or any other governmental department, dealing with the very essential purpose of such department, which directly and vitally affects the life, limb and property of the people of a city, as being a mere "ministerial" act. It is as much a governmental function as the exercise of any other police power is a governmental function.

Government is a growth, necessarily so, and every new field of public duty it invades it so does in the exercise of a governmental function, and if in the exercise of such function it invades or violates personal rights granted and guaranteed by the constitution then it must in such case respond in damages for the right so violated.

After all, in the case at bar, there is nothing new in principle in holding municipalities liable for their negligence. For many years municipalities have been held liable for their failure to keep their streets and sidewalks open, safe for travel, and free from nuisance. Many cases may be cited in support of this doctrine, and it cannot be denied that the care of the streets is a governmental function, and surely it would not be claimed that the care of the streets, vital and important as it is to municipal life and activity, is a

“ministerial” act. It is as much a governmental function as any other municipal act possibly could be.

Indeed the case at bar belongs to the same family of nuisances in the public streets as those in which municipalities have heretofore been held liable. What could be a greater nuisance than the careless and negligent running of a motor hose-truck at a great rate of speed in a public square, where hundreds of people are going about, where they have a lawful right to be, without warning and without opportunity to avoid the danger of collision with a motor truck? It may be the worst kind of a nuisance, the most dangerous to life and limb, as it proved to be in the case at bar.

Reason and righteousness both demand that in such a case, where the proper facts are pleaded and proven, there should be a liability fixed against the municipality.

For many years, also, the municipality in the exercise of its function for the change of grade of streets has recognized the right of abutting property owners for damages for such change of grade. Yet the change of the grade was the exercise of a governmental function in the improvement and development of the city.

In the exercise of the right of eminent domain, in order to carry out some police power in the municipality, certain specific real property is appropriated by condemnation proceedings. Now if the constitution so permitted, the inherent powers of government would no doubt permit the taking of such property without compensation, but realizing the equities of the case in the property owner the constitution safeguards that right by providing that compensation shall be made to the owner of the property, when taken for public use, and the compensation is raised by taxation over the entire community, all contributing. In principle why should there be any difference when human life is taken in the exercise of some governmental function? As to the taking of the property there is no negligence, there is no wrong, but compensation nevertheless is made. As to the taking of life there is negligence, there is wrong, and why should satisfaction not be made for such wrong? . . .

JONES, J., Dissenting. The decision in this case not only overrules the established legal principles heretofore announced by this court, but is at variance with the principles settled by practically every court in this country. The law upon this subject was stated in the syllabus in *Frederick, Adm.x., v. City of Columbus*, 58 Ohio St., 538, as follows:

“A municipal corporation is not, in the absence of any statutory provision, liable in damages to one injured by the negligent acts of its fire department, or any of its members.”

The principle there announced, however, was no new one, for it had already been established in this state in the reported cases of *Western College v. City of Cleveland*, 12 Ohio St., 375, and *Wheeler v. City of Cincinnati*, 19 Ohio St., 19. As late as 1909 this principle found approval in *Bell v. City of Cincinnati*, 80 Ohio St., 1. In the case of *Frederick, Admx., v. Columbus, supra*, Judge Minshall says at page 584: “The decision in this case is fully supported by the authorities, and the decisions in the other states of the union. There is, in fact, a remarkable unanimity on the subject.”

Upon this all the textbooks are in accord in holding that members of a fire department of a municipality are not agents for whose negligent conduct the city may be held liable. It is stated in 5 McQuillin on Municipal Corporations, Section 2432, that “This rule of non-liability has been followed in many decisions and is well settled. And the municipality is not liable either for acts of commission or *acts of omission*, unless liability is expressly imposed by statute,” etc.

Mr. Dillon in the fourth volume of his work on Municipal Corporations, Section 1660, states the same rule of non-liability in the absence of express statute.

Mr. Tiedeman, also, in his work on Municipal Corporations, Section 333a, states that a municipal corporation is not liable to a person who is run over by a horse carriage on its way to a fire.

Mr. Justice Gray, in the *Admiralty case, Workman v. N. Y. City*, 179 U. S., 550, 580, there states, as I am content to do, that “The decisions are so uniform, and treat the point as so well settled, that it is enough to cite them, without stating them in detail.”

What warrant, therefore, is there for pursuing a course so much at variance with the established legal doctrines of this country, and which over-rules the well-settled principles of law in this state? Is it a question of public policy? If so, that feature should be addressed to the legislative and not to the judicial department. Frequently the legislature has prescribed liability against counties and cities where but for the legislative action none would exist. If it should be desired that the doors of the public treasuries of these municipalities should be flung wide open at the

behest of anyone who conceives that he has been injured by some officer or employe of the municipality while exercising public and governmental functions, the legislature can easily provide a remedy.

Counsel for plaintiff in error say in their brief, "*The legislature has not caught up with this spirit of the times*, and it is submitted that the courts are not entirely precluded from doing so *notwithstanding this neglect of the legislature.*" This is an appeal for judicial legislation entirely unwarranted by the constitution. Moreover, the policy of the people of this state has been engrafted upon our constitution, which now provides that in suits against the sovereign (which in this state constitute the people, who, by their initiative, may establish constitutions and laws) legislative action must first be obtained. The latter clause of Section 16, Article I, provides: "Suits may be brought against the state, in such courts and in such manner as may be provided by law." This provision did not promulgate any new principle in the jurisprudence of this state. Prior to its adoption in our Constitution of 1912 our courts had held that the state and its subdivisions were not suable without legislative consent, and it was under that principle that the *Frederick case*, *supra*, was decided. When, therefore, the people adopted the constitutional provision just quoted, they placed in the organic law of the state the judicial principle of exemption from liability which theretofore obtained in favor of the sovereign and its various subdivisions when acting for it in a governmental capacity.

In the case of *Raudabaugh v. State*, 96 Ohio St., 513, all the present judges concurring, it was held that this clause was not self-executing, but that "statutory authority is required as a prerequisite to the bringing of suits against the State." This then evinces the policy of all the people, that the state and its governmental subdivisions exercising governmental functions in its behalf should not be suable unless the legislature had expressly provided therefor. In this class of cases a city must act through its servants. It is required in the interest of public safety that the municipality provide police and fire departments. The servants employed in these departments are not acting under the principle of *respondeat superior* and for the benefit of the city as a corporate entity, but are acting for the entire public. These servants are agents of the entire people, not only of a person who may be injured but of every citizen in the municipality. The employe, therefore, if exercising this governmental function, is the agent of

the plaintiff as well as the rest of the community. The corporation in its corporate capacity receives no special benefit, the benefit accrues to the community. It must be conceded that the defendant in this instance, although acting through its fire employe, was exercising a governmental function. That principle is established not only in this state but elsewhere. *Its act was not a ministerial one.*

“There is a distinction between those powers of a municipal corporation which are governmental or political in their nature and those which are to be exercised for the management and improvement of property. As to the first, the municipality represents the state, and its responsibility is governed by the same rules which apply to like delegation of power.” *City of Cincinnati v. Cameron*, 33 Ohio St., 336.

The statutory provision that a municipal corporation may sue and be sued gives no sanction for imposing liability. It simply means that there may be a suit where there is liability. The statute creates no liability. The county, through its commissioners, may sue and be sued, but no liability accrues from the action of a mob except by legislative authority. Furthermore, that section has long been upon our statute books and it has not escaped the attention of this court, for it has been expressly held in the syllabus of *Overholser v. National Home*, 68 Ohio St., 336, that “The grant of power to sue and be sued at law and in equity applies to such matters only as are within the scope of the other corporate powers of the defendant, *and it does not authorize such corporation to be sued for a tort.*”

It was held in *Finch v. Board of Education*, 30 Ohio St., 37, that the board of education was not liable in its corporate capacity for damages for a tortious act, although the board of education by its charter was declared to be a body politic and corporate in law, with capacity to sue and be sued.

The majority opinion in the case of *Workman v. N. Y. City*, 179 U. S. 552, has been cited in support of the majority opinion. That was purely an *admiralty* case, *in rem*, and as stated by the court was governed entirely by the *admiralty law*. Had the question arisen under the local laws of any of the states, it is evident that the decision would have been otherwise, although even under the *maritime* law its application was denied by four dissenting judges, Justices Gray, Brewer, Shiras and Peckham. It was conceded in both opinions that the local law was otherwise, but the

majority simply applied the *admiralty* law where it held the city for damages to the extent of the value of the vessel. About the time this case was decided a Federal case under the *maritime* law arose in the city of Cleveland in this state, and at a time when the local law of non-liability had been well settled in the *Frederick* and other cases. This was in 1899. There the federal judge held in the Ohio case that the rule of the *maritime* law was not based on the relation of master and servant, but rested upon the fact of *ownership* alone, and that the principle which held the city exempt from liability for the negligent acts of its firemen had no application to the case of a *maritime* injury, and that the city could be held responsible in a court of admiralty *to the extent of the value of the tug owned by the city*. *Henderson v. City of Cleveland*, 93 Fed. Rep., 844.

I have not cited the multitudinous cases reported in other jurisdictions supporting this opinion. These may be found in the citations attached to the various textbooks to which I have referred.

The municipalities of the state are merely agents of the sovereign when they exercise governmental functions, and where employes of a fire department, while on their way to a conflagration menacing the city, where the lives of citizens may be imperiled by the loss of a few seconds time, do commit an act of negligence, whether of omission or commission, such act should not cast upon the municipality, in its attempt to allay the conflagration or rescue the citizens, a civil liability, unless it is expressly imposed upon the municipality by statute.

CORNELIUS MCDADE V. CITY OF CHESTER.

ERROR to the Court of Common Pleas of Delaware County.

OPINION, MR. JUSTICE CLARK:

This action on the case was brought against the city of Chester to recover damages for a personal injury received by the plaintiff, Cornelius V. McDade, from the explosion of a manufactory of fire-works, operated in that city by Professor Jackson. The manufactory was the individual property of the operator, and was located upon his ground. On the 17th of February, 1882, the manufactory caught fire, and, whilst the plaintiff was assisting in the extinguishment of the flames, an explosion of the fire-works occurred, from which the injury complained of was received.

The plaintiff's contention is, that it was the duty of the city

to have suppressed this manufactory of fire-works; that this duty was neglected; that in consequence of the neglect, the plaintiff received his injuries, and that the city is liable in damages for the same. The question is raised upon a demurrer to the plaintiff's declaration. The defendant sets forth, as cause of demurrer, that there was no absolute duty or obligation resting upon the city to prohibit the manufacture of fire-works, or limit the quantity of inflammable materials, which might be kept in store by Jackson, or to abate the manufacture or suppress the sale of fire-works as a common nuisance.

The city of Chester was incorporated under a special act of assembly of 14th of February, 1866, P. L. 30, with the same powers, privileges, etc., as were granted to the city of Harrisburg, under an act approved 19th of March, 1860, P. L. 175. By the eighth section of the act of 1860, thus extended, the mayor and councils of the city of Chester were empowered "to make, ordain, constitute and establish all such by-laws, ordinances, resolutions and regulations as they may deem necessary to preserve the peace and promote the good order, government and welfare of the said city, and the prosperity and happiness of the inhabitants thereof." By the act of April 2, 1867, P. L. 677, the mayor and councils of the said city, in addition to all the powers theretofore granted, were, *inter alia*, further empowered:

"11. To prohibit and remove any obstructions in the highways, and any nuisance or offensive matter, whether in the highways or on public or private ground.

"12. To prohibit within the said city the carrying on of any manufacture, art, trade or business which may be noxious or offensive to the inhabitants thereof, the manufacture, sale or exposure of fire-works, or other inflammable or dangerous articles, and to limit and prescribe the quantities that may be kept in one place, of gunpowder, fire-works, turpentine and other inflammable articles, and to preserve such other safeguards as may be necessary."

And for the purposes aforesaid, the mayor and councils had full power to enter upon the lands or premises of any person or persons, by themselves and their duly appointed officers and agents. By the fifth section of the act of March 22, 1869, P. L. 484, it was provided that the said mayor or council shall have power to cause the removal, by such means as to them shall seem best, of any nuisance.

It is contended by the plaintiff in error that this manufactory

of fire-works was per se a public nuisance, of which the mayor and councils, under the city charter and the several statutes referred to, were bound to take notice; that the duty to suppress it was legal and absolute, and the city, failing to do so, is liable for all injuries which are the approximate results of its continuance. Upon a careful examination of the whole case, we are unable to adopt this view of the case.

When a legal duty has been imposed by statute upon a municipal corporation, it is undoubtedly liable for injuries resulting from the neglect of that duty; in such case it stands on the same footing in respect to negligence as a purely private corporation or an individual: *Erie City v. Schwingle*, 22 Pa. 388; *Shear. & Redf. on Neg.* 167; *Dillon Mun. Corp.*, §§ 961-5. But the duty imposed must be absolute or imperative, not such as, under a grant of authority, is intrusted to the judgment and discretion of the municipal authorities; for it is a well settled doctrine that a municipal corporation is not liable to an action for damages, either for the non-exercise of, or for the manner in which, in good faith, it exercises discretionary powers of a public or legislative character: *Dillon Mun. Corp.*, § 949. It is certainly unnecessary to cite further authorities in support of a principle so well settled; indeed, we do not understand the general doctrine to be denied, but it is argued that it is inapplicable to the case now in hand.

It is likewise true that when a power is given to do an act which concerns the public interest, the execution of the power, when applied to a public officer or body, may be insisted upon as a duty, although the phraseology of the statute be permissive only; especially is this so when there is nothing in the act save the permissive form of expression to denote that the legislature designed to lodge a discretionary power merely. But where the power is lodged with persons exercising, or to exercise, legislative or judicial functions, and the subject matter of the statute and its phraseology concur in showing that the authority is essentially discretionary, no absolute duty is imposed. The true rule is very correctly stated in our own case of *Carr v. Northern Liberties*, 35 Pa. 330, as follows: "Where any person has the right to demand the exercise of a public function, and there is an officer or set of officers authorized to exercise that function, there the right and the authority give rise to the duty; but where the right depends upon the grant of authority, and that authority is essentially discretionary, no legal duty is imposed."

To the same effect is the very recent case of *Lehigh Co. v. Hoffort*, 116 Pa. 119, where it was held that an act of assembly which authorized the county commissioners to erect a footwalk along the side of a county bridge for the public use and benefit, was a discretionary power only, and the county was not liable for the non-exercise of the same. Where the subject matter is intrusted for legislative or judicial action, the duty of course is essentially discretionary; no person has the right to demand the exercise of this public function, and there is therefore nothing which can give rise to an absolute duty.

The language of the several statutes above referred to is plainly permissive only. By the act of 1860 the officers of the corporation are vested with full "power and authority" to make, ordain, etc., such ordinances, regulations, etc., as they may deem necessary, etc. By the act of 1867 it is declared that the mayor and councils, etc., in addition to all powers heretofore granted, etc., "shall have the following powers," etc.; and by § 5, act of March 22, 1869, it is provided that they "shall have power" to cause the removal of any nuisance "by such means as to them shall seem best." If these provisions are held to be imperative, it must be upon some rule of construction which will impart to the words an interpretation beyond their usual signification. Moreover, the powers granted in the act of 1867 are over such matters as constitute appropriate subjects of legislation or judicial action in the government of a municipality. The laying out and opening of streets, common sewers public squares and sidewalks; the regulation of party walls, and of weights and measures; the prohibition of horses, cattle or swine from running at large, etc., are embraced in the same section, and the regulation and control of all these respective matters are committed to the mayor and councils, in the same permissive form of words. It is plain, we think, that all the various matters mentioned in the eighth section, including the prohibition and abatement of nuisances, were given into the control of municipalities as proper subjects for legislation in the government of the city; and as such action necessarily involves the exercise of discretion, no absolute duty was imposed or intended to be imposed by the legislature. The whole question is one of legislative intention, and we find nothing in these several statutes to indicate that the legislature meant more than is plainly expressed.

There can be no doubt whatever that the municipal authorities of the city of Chester had full power to act in the premises. They

had undoubted authority either to limit or to prohibit altogether the manufacture, sale or exposure of fire-works within the corporate limits, and to provide such safeguards for the security of its citizens as in their judgment might be necessary. This subject-matter had been especially intrusted to their judgment and discretion in the charter and acts of assembly mentioned; but certainly no person had any right to demand the exercise of this power in any particular way or to any greater extent than the mayor and councils, in good faith and in the exercise of their discretion, might see proper to provide.

Many of the cases cited by the plaintiff in error refer to the non-exercise of power to repair streets and to remove nuisances therefrom. It has never been doubted that municipal corporations are responsible for the results of the negligence of their officers in the repair of their highways. The repair of the highways is a mandatory and absolute duty; it is expressly imposed by statute on the road supervisors of the respective townships: *Rappho v. Moore*, 68 Pa. 484; and where a municipal corporation, by the acceptance of a charter investing it with the care of the highways within its borders, withdraws the charge from this general peremptory provision, it, by implication, undertakes the duty from which it has absolved the supervisors. Where, under such circumstances, special powers are conferred upon a corporation to open, grade, improve and exclusively control and regulate the public streets within its limits, and the means are provided by taxation for this purpose, although the duty to repair is not enjoined by statute or an action expressly given, both the duty and the liability will be deduced therefrom: *Dillon Mun. Corp.*, § 789.

We are clearly of opinion that the learned court was right in entering judgment for the defendant, and therefore the judgment is affirmed.

JOHNSTON V. DISTRICT OF COLUMBIA.

ERROR to the Supreme Court of the District of Columbia.

This was an action against the District of Columbia by a citizen and taxpayer in Washington to recover damages caused to his house and land fronting on Missouri Avenue, in the summer of 1877, by the overflow of foul water from a sewer in that avenue, which the declaration alleged that the defendant knowingly constructed and continued upon an unreasonable and defective plan,

and of inadequate capacity for its purpose, and wrongfully permitted to become choked up. The defendant denied its liability.

The plaintiff's bill of exceptions stated that he testified that at the time alleged his house and land were overflowed and injured by foul water from this sewer; that he noticed that the water in the avenue was very deep; and that he never saw or knew of any flooding or overflow of the avenue or of his property until the sewer was constructed. The rest of the bill of exceptions was as follows:

"And to sustain further the issues joined, the plaintiff put upon the stand, as his witness, Benjamin Severson, a citizen of Washington, and an engineer by profession, who testified to the Tiber sewer being two feet lower at its base than the Missouri Avenue sewer where they meet each other; and being asked by the counsel for the plaintiff what, in his opinion, the consequence would be in case a freshet or great fall of rain, the question was objected to by the counsel of the defendant, unless the counsel for the plaintiff stated his object in asking such question; and thereupon it appeared that it was asked with the view of showing by that witness that the plan on which the sewer had been constructed by the authorities of the District had not been judiciously selected; and thereupon the testimony was objected to, and the court, after argument, sustained the objection, to which ruling the plaintiff's counsel excepted."

The jury returned a verdict for the defendant, the exceptions were overruled by the court in general term, and the plaintiff sued out this writ of error. . . .

Mr. JUSTICE GRAY, after stating the case as above reported, delivered the opinion of the court.

The duties of the municipal authorities, in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a *quasi* judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion, in the selection and adoption of the general plan or system of drainage, is not subject to revision by a court or jury in private action for not sufficiently draining a particular lot of land. But the construction and repair of sewers, according to the general plan so adopted, are simply ministerial duties; and for any negligence in so constructing a sewer, or keeping it in repair, the municipality which has con-

structed and owns the sewer may be sued by a person whose property is thereby injured.

The principal decisions upon the subject are collected in the briefs of counsel, and generally, if not uniformly, support these propositions. The leading authorities are the judgments of the Supreme Judicial Court of Massachusetts, delivered by Mr. Justice Hoar, in *Child v. Boston*, 4 Allen, 41, 51-53, and of the Court of Appeals of New York, delivered by Chief Justice Denio, in *Mills v. Brooklyn*, 32 N. Y. 489, 495-500.

In *Barnes v. District of Columbia*, 91 U. S. 540, 556, it was said that in *Rochester White Lead Co. v. Rochester*, 3 N. Y. 463, "the city was held liable because it constructed a sewer which was not of sufficient capacity to carry off the water draining into it. The work was well done; but the adoption and carrying out of the plan was held to be an act of negligence." But this was clearly a mistake; for in the *Rochester Case* the fact was distinctly found that the insufficiency of the culvert to carry off the water was owing, not merely to the smallness of its size, but to "the want of skill in its construction;" 3 N. Y. 465; and the case was distinguished on that ground in *Mills v. Brooklyn*, 32 N. Y. 499. The question in judgment in *Barnes v. District of Columbia*, as well as in *Weightman v. Washington*, 1 Black, 39, was of municipal liability, not for an injury to property by a sewer, but for a personal injury to a traveller by a want of repair in the highway, a question not now before us. In *Barton v. Syracuse*, 36 N. Y. 54, also cited for the plaintiff, the ground of action was not the plan of constructing the sewer, but the neglect to keep it in repair.

In the present case, the only evidence offered by the plaintiff, which was excluded by the court, was evidence of what, in the case of a freshet, or of a great fall of rain, would be the consequence of the difference in level between the sewer in question and another sewer connecting with it; and this evidence, as the plaintiff's counsel avowed, was offered "with the view of showing that the plan on which the sewer had been constructed by the authorities of the District had not been judiciously selected."

The evidence excluded was clearly inadmissible for the only purpose for which it was offered. As showing that the plan of drainage was injudicious and insufficient, it was incompetent. As bearing upon the question whether there was any negligence in the actual construction or repair of the sewer, or the question whether the sewer was so constructed as to create a nuisance upon the

plaintiff's property, it was immaterial. The instructions given to the jury are not reported and must be presumed to have been accurate and sufficient.

Judgment affirmed.

EDWARD C. CRAIG V. THE CITY OF CHARLESTON.

. . . .

Per CURIAM: In affirming the judgment of the circuit court for costs and sustaining the demurrer to the plaintiff's declaration the following opinion, delivered by Mr. Justice HARKER, was rendered by the Appellate Court:

"The sufficiency of the declaration is the only question for our consideration. Stripped of their surplusage the material averments of fact are, that the city of Charleston, on an occasion when a large crowd of people had congregated in the city, appointed one John Apgar as an officer to prevent the obstruction of the streets by vehicles or otherwise, and placed him in control of one of the streets; that Apgar was a dangerous and violent man and possessed an ungovernable temper and vicious disposition, which facts were known, or by the exercise of reasonable diligence could have been known, to the appointing officer; that Apgar, while in charge of the street and under pretense of discharging his duty, made a brutal and unjustifiable assault upon the plaintiff with a stick, whereby the plaintiff lost one of his eyes and was otherwise injured.

"The duties devolving upon Apgar by virtue of his appointment were police duties. He was what is sometimes aptly termed a 'special policeman,' authorized to perform certain specific acts. It is a familiar rule of law, supported by a long line of well considered cases, that a city, in the performance of its police regulations, cannot commit a wrong through its officers in such a way as to render it liable for tort.

"It is contended, however, that appellant does not base his right of recovery against the city upon the wrongful act of Apgar, merely, but upon the wrongful act of the mayor in appointing such a man as Apgar, when he knew, or should have known, of his dangerous and vicious character. The same principle which absolves the city from liability for Apgar's tortious act applies to the act of the mayor. The mayor was simply exercising a discretion vested in him by virtue of his office and the laws of the State.

If the appointment was a wrongful act, which resulted in injury to the appellant, the burdens of liability cannot be cast upon the inhabitants and tax-payers of the city. A municipal corporation, while simply exercising its police powers, is not liable for acts of its officers in the violation of the laws of the State and in excess of the legal powers of the city. *Dillon on Mun. Corp.* secs. 950, 968; *Town of Odell v. Schroeder*, 58 Ill. 353; *City of Chicago v. Turner*, 80 id. 419; *Wilcox v. City of Chicago*, 107 id. 334; *Blake v. City of Pontiac*, 49 Ill. App. 543.

“Appellant further contends that the placing of Apgar in the street and in control of it was the creation of a nuisance, upon which ground it is liable,—in fact, his chief contention is that he became thereby an obstruction in the street,—and cites a long list of authorities in support of the proposition that it is the duty of a city to keep its streets free from obstructions, and a failure in that regard will render it liable for injuries caused thereby. We cannot regard a human being in the exercise of police powers as an obstruction, in the sense contemplated by the unquestioned doctrine announced by those cases.

“We think the court properly sustained the demurrer to the declaration.”

After a careful consideration of the case we have reached the same conclusion as that arrived at by the courts below, and, concurring in the views of the Appellate Court, we see no necessity for another opinion on this appeal, but adopt the one above set out as the opinion of this court in the case.

The judgment of the Appellate Court is affirmed.

Judgment affirmed.

PART VI

MUNICIPAL REFORM ORGANIZATIONS

55. Call For the First National Conference for Good City Government, 1894.

Prior to 1880, municipal reform organizations were temporary affairs created for purposes of particular campaigns. In the following decade organizations of another kind began to be established, with the purpose of exercising some permanent effect upon the character of municipal government. In December, 1893, two of these, the City Club of New York and the Municipal League of Philadelphia, joined in calling a national conference for good city government, to meet in Philadelphia the following January. The purposes of the meeting appear in the extract which follows. Included among those who signed the call were many persons celebrated in the history of governmental reform in the United States.

SOURCE—*Proceedings of the National Conference for Good City Government, held at Philadelphia, January 25 and 26, 1894* (Philadelphia, 1894), 46-47.

CALL FOR THE CONFERENCE

AND

ENDORSEMENT.

THE MUNICIPAL LEAGUE OF PHILADELPHIA.

PHILADELPHIA, December 29, 1893.

DEAR SIR:—The MUNICIPAL LEAGUE of Philadelphia, with the co-operation of the CITY CLUB of New York, has decided to issue a call

for a NATIONAL CONFERENCE FOR GOOD CITY GOVERNMENT, to be held in Philadelphia on the 25th and 26th days of January, 1894.

The Principal objects of the Conference will be to determine, so far as is possible by inquiry and debate, the best means for stimulating and increasing the rapidly growing demand for honest and intelligent government in American cities, and to discuss the best methods for combining and organizing the friends of Reform so that their united strength may be made effective.

The programme for the papers and discussions, as at present outlined (subject to possible changes), is as follows:

First.—A brief summary of existing conditions in different cities, and a description of Municipal Government and Municipal Officials as they ought to be.

Second.—Methods for obtaining better Government without resorting to the nomination or support of independent candidates.

Third.—Methods that involve the nomination or support of independent candidates.

Further details will be mailed hereafter to those proposing to attend.

You are respectfully invited to be present at the meetings and to take part in the discussions. It is believed that by attending this Conference, those who realize the vast importance of the problems to be discussed will accomplish much in arousing public interest, in raising the popular standards of political morality, and in securing for the advocates of Municipal Reform that feeling of brotherhood and coöperation and that unity of action and methods, which will multiply their strength and enthusiasm, and inspire the people with the hope and confidence essential to final success.

If you are an officer of any association of voters, which has for one of its objects the improvement of Municipal Government or the proper management of City affairs, we shall be greatly obliged if you will at once do whatever may be necessary to extend this invitation to such organization, and procure the appointment of delegates to attend the Conference. It is our desire to have copies of this letter sent to the secretaries of all associations of a kindred character in the United States, but there may be many whose addresses are unknown to us, and we shall, therefore, be very glad to receive any that you can furnish.

An early response is specially requested, as our time for preparation is brief. Letters may be directed to the Corresponding

Secretary of the League—Clinton Rogers Woodruff, 514 Walnut Street, Philadelphia, Pa.

Very respectfully,

CHARLES RICHARDSON,
STUART WOOD,
GEORGE BURNHAM, JR.,
S. D. MCCONNELL,
EDMUND J. JAMES,
WILLIAM I. NICHOLS,
JOSEPH G. ROSENGARTEN,

FRANCIS B. REEVES,
W. M. SALTER,
HERBERT WELSH,
CLINTON ROGERS WOODRUFF,
THOMAS MARTINDALE,
GEORGE GLUYAS MERCER,
R. FRANCIS WOOD,
Committee of Arrangements.

EDMOND KELLEY,
JOHN HARSEN RHOADES,
R. FULTON CUTTING,

Committee of City Club of New York.

We desire to express our cordial approval of the call issued by the Municipal League of Philadelphia for a National Conference for Good City Government, to be held in Philadelphia on the 25th and 26th days of January, 1894. Appreciating the vital importance, as well as the difficult nature, of the problems to be discussed, we sincerely hope that those who have given particular attention to such subjects will make special efforts to attend the Conference.

JAMES C. CARTER, President of the City Club of New York.

EDMOND KELLY, Secretary of the City Club of New York.

R. W. GILDER

CHARLES FRANCIS ADAMS, Boston.
THEO. ROOSEVELT, Washington,
D. C.
RICHARD H. DANA, Boston.
CHARLES J. BONAPARTE, Balti-
more, Md.
HENRY C. LEA, Philadelphia.
CHARLES A. SCHIEREN, Brooklyn.
CHAS. ELIOT NORTON, Cambridge,
Mass.
GEORGE W. CHILDS, Philadelphia.

CARL SCHURZ, New York.
CHARLES W. ELIOT, Cambridge,
Mass.
ABRAM S. HEWITT, New York.
LYMAN J. GAGE, Chicago.
WAYNE MACVEAGH, Philadelphia.
WASHINGTON GLADDEN, Colum-
bus, O.
DANIEL C. GILMAN, Baltimore,
Md.
LYMAN ABBOTT, New York.

- GAMALIEL BRADFORD, Boston.
 MOORFIELD STOREY, Boston.
 MATTHEW HALE, Albany, N. Y.
 L. CLARKE DAVIS, Philadelphia.
 R. FULTON CUTTING, New York.
 HORACE WHITE, New York.
 WILLIAM G. LOW, Brooklyn.
 EDWARD M. SHEPARD, Brooklyn.
 JOHN FIELD, Philadelphia.
 FRED. LAW OLMSTEAD, Brookline,
 Mass.
 PHILIP C. GARRETT, Philadelphia.
 SAMUEL B. CAPEN, Boston.
 ISAAC SHARPLESS, Haverford
 Coll., Pa.
 ANSLEY WILCOX, Buffalo, N. Y.
 FINLEY ACKER, Philadelphia.
 EDWARD CARY, Brooklyn.
 JOHN B. GARRETT, Philadelphia.
 JOEL J. BAILY, Philadelphia.
 J. ANDREWS HARRIS, Philadel-
 phia.
 JOSEPH KRAUSKOPF, Philadel-
 phia.
 EDWIN D. MEAD, Boston.
 CHARLES C. HARRISON, Philadel-
 phia.
 ISAAC J. WISTAR, Philadelphia.
 EVERETT P. WHEELER, New York.
 JACOB F. MILLER, New York.
 SETH SPRAGUE TERRY, New York.
 SAMUEL H. ORDWAY, New York.
 JAMES S. WHITNEY, Philadelphia.
 FRANKLIN MACVEAGH, Chicago.
 R. C. MCMURTRIE, Philadelphia.
 JOSEPH S. HARRIS, Philadelphia.
 MARSHALL FIELD, Chicago.
 HERBERT LEE HARDING, Boston.
 CAUSTEN BROWNE, Boston.
 E. P. ALLINSON, Philadelphia.
 R. W. GILDER, New York.
- RICHARD T. ELY, Madison, Wis.
 ALEXANDER BROWN, Philadelphia.
 FRANCIS A. WALKER, Boston.
 EDWARD E. HALE, Boston.
 JOHN R. PROCTER, Washington,
 D. C.
 EDWIN L. GODKIN, New York.
 WENDELL P. GARRISON, New York.
 WILLIAM POTTS, New York.
 W. HARRIS ROOME, New York.
 H. B. ADAMS, Johns Hopkins Univ.
 WM. J. GAYNOR, Brooklyn.
 SYLVESTER BAXTER, Boston.
 HAMPTON L. CARSON, Philadel-
 phia.
 THEODORE M. ETTING, Philadel-
 phia.
 ELLIS D. WILLIAMS, Philadelphia.
 O. W. WHITAKER, Philadelphia.
 W. W. FRAZIER, Philadelphia.
 W. DUDLEY FOULKE, Richmond,
 Ind.
 J. LA BARRE JAYNE, Philadelphia.
 JOHN H. CONVERSE, Philadelphia.
 WM. P. HENSZEY, Philadelphia.
 HORACE E. DEMING, New York.
 ANSON PHELPS STOKES, New
 York.
 ALFRED BISHOP MASON, New
 York.
 A. R. MACDONOUGH, New York.
 CHAS. R. CODMAN, Barnstable,
 Mass.
 GEORGE BURNHAM, Philadelphia.
 J. RODMAN PAUL, Philadelphia.
 JAMES E. RHOADS, Bryn Mawr.
 E. W. CLARK, Philadelphia.
 WILLIAM PEPPER, Philadelphia.
 S. DAVIS PAGE, Philadelphia.
 ALBERT SHAW, New York.
 DORMAN B. EATON, New York.

56. Constitution of the National Municipal League, 1894.

The first National Conference for Good City Government resulted in the establishment of the National Municipal League, designed as a federation of local municipal reform organizations. Under the League's auspices a National Conference for Good City Government has been held each year since 1894, and the influence exercised by it has been very great.

The character of the early municipal reform organizations is well indicated by the objects of the National Municipal League as set forth in its constitution. These were largely political and had to do with the election of good men to office. The nature of the League has subsequently undergone a great change. The organization is no longer a federation of associations; its membership is made up largely of individuals. At its early meetings distinguished citizens discussed questions of general municipal reform, such as the secret ballot, the primary, and non-partisanship in elections. Today its meetings are attended almost altogether by persons professionally interested in good city government: secretaries of civic associations, representatives of municipal bureaus of research, and teachers of municipal government. The development of the municipal reform movement in this country can be best traced in the *Proceedings of the National Conferences for Good City Government*, for the period from 1894 to 1911, and in the *National Municipal Review*, from 1911 to the present.

SOURCE—*Proceedings of the National Conference for Good City Government, held at Philadelphia, January 25 and 26, 1894* (Philadelphia, 1894), 303-305.

CONSTITUTION OF THE NATIONAL MUNICIPAL LEAGUE.

The objects of the National Municipal League shall be as follows:—

First. To multiply the numbers, harmonize the methods, and combine the forces of all who realize that it is only by united action and organization that good citizens can secure the adoption of good

laws and the selection of men of trained ability and proved integrity for all municipal positions, or prevent the success of incompetent or corrupt candidates for public office.

Second. To promote the thorough investigation and discussion of the conditions and details of civic administration, and of the methods for selecting and appointing officials in American cities, and of laws and ordinances relating to such subjects.

Third. To provide for such meetings and conferences and for the preparation and circulation of such addresses and other literature as may seem likely to advance the cause of Good City Government.

The League shall be composed of Associations formed in cities of the United States and having as an object the improvement of Municipal Government. It shall have no connection with State or National parties or issues, and shall confine itself strictly to Municipal affairs. Any Association belonging to the League may withdraw at any time.

The League shall be managed by a Board of Delegates chosen by the Associations composing it. Each Association shall be entitled to appoint from time to time as many delegates as it may see fit, and each delegate shall retain his position until he is withdrawn or his successor is qualified or his association becomes inactive.

Whenever a delegate shall demand a vote by Associations on any question the vote shall be so taken, and the vote of each Association shall be cast according to the preference of the majority of its delegates then present.

Additional Associations may be admitted to membership at any time by the Board of Delegates. The said Board shall also have the power to terminate the membership of any Association at any time by a vote representing three-fourths of the Associations then belonging to the League.

The Board of Delegates shall have power to decide upon the qualifications of its members, to appoint all necessary officers and employes, and to raise funds for all proper expenses, but there shall be no dues or assessments, and no Association shall be liable for any sums except such as it may from time to time voluntarily agree to contribute.

The Board may delegate any of its powers to such committees as it may think proper.

In all cases in the Board and in Committees, members unable

to be present may offer resolutions or vote either by mail or by proxy.

The Board of Delegates may, in their discretion and upon such terms and conditions as they approve, admit individuals as associate members of the League, but such associate memberships shall not confer the right to vote or in any way act for the League.

The Board of Delegates shall have power to make and alter By-Laws provided they do not conflict with the Constitution.

This Constitution may be amended at any time by the votes of delegates representing three-fourths of the Associations then belonging to the League.

57. The Baltimore Department of Legislative Reference, 1906.

In recent years the municipal reform movement has come to center chiefly upon improvement in administrative organization and methods. Instead of being most concerned with the honesty and representative character of city government, municipal reformers are now concerned with the search for efficiency. In this connection a considerable number of research organizations have been established, most of them under private, but some of them under public, auspices. One of the earliest steps to provide officially for the collection of information to aid a city government was the creation of the Baltimore Department of Legislative Reference in 1906.

SOURCE—*Laws of the State of Maryland*, 1906 (Annapolis, 1906), Chap. 565.

Section 208A. There shall be a Department of Legislative Reference of the Mayor and City Council of Baltimore. The head of said department shall consist of a board composed of the Mayor of Baltimore, the City Solicitor, the president of the Johns Hopkins University, the president of the Municipal Art Society, and the president of the Merchants and Manufacturers' Association of Baltimore City; and the members of the said board shall serve without pay. The said board shall employ a competent statistician as its executive officer to organize and conduct the said department; and the said executive officer shall hold office from the first day

of January, 1907, during good behaviour, and shall be subject to removal by said board, or a majority thereof, for incompetence or neglect of duty.

Section 208B. It shall be the duty of said executive officer to investigate and report upon the laws of this and other States and cities relating to any subject upon which he may be requested to so report by the Mayor of Baltimore, any committee of the City Council or the head of any city department; to accumulate all data obtainable in relation to the practical operation and effect of such laws; to investigate and collect all available information relating to any matter which is the subject of proposed legislation by the General Assembly of Maryland or the City Council of Baltimore; to examine Acts, ordinances and records of any State or city, and report the result thereof to the Mayor of Baltimore, any committee of the City Council, or the head of any city department requesting the same; to prepare or advise in the preparation of any bill, ordinance or resolution when requested so to do by any member of the City Council; to preserve and collect all information obtained, carefully indexed and arranged so as to be at all times easily accessible to city officials and open to the inspection of the general public; to perform such other duties as the said board may prescribe, and to make a full and complete report thereof on or before the first day of February of each and every year; to cover the work for the previous fiscal year ending December 31st.

Section 208C. The Board of Estimates shall provide, in the ordinance of estimates for the year 1907, and annually thereafter, for the payment of the salary of said executive officer, which shall not be less than \$2,000 per annum, and also a sum sufficient to pay all other expenses of the said department of legislative reference.

58. The Permanent Finance Commission of Boston, 1909.

The final report of the Finance Commission appointed by the mayor of Boston in 1907 recommended, among other things, the establishment of a Permanent Finance Commission, to be appointed by the governor and to report annually to the legislature. Provision was made for such a commission in the charter of Boston adopted in 1909. This commission is supported by an annual appropriation

of \$35,000 and has been very active in investigating the conduct of Boston city government. Its recommendations have resulted in considerable savings, and when its recommendations have not been accepted, its annual reports to the legislature have served to fix responsibility for the failure.

SOURCE—*Acts and Resolves passed by the General Court of Massachusetts, 1909 (Boston, 1909), Chap. 486.*

THE FINANCE COMMISSION.

SECTION 17. Within sixty days after the passage of this act the governor with the advice and consent of the council shall appoint a finance commission to consist of five persons, inhabitants of and qualified voters in the city of Boston, who shall have been such for at least three years prior to the date of their appointment, one for the term of five years, one for four years, one for three years, one for two years, and one for one year, and thereafter as the terms of office expire in each year one member for a term of five years. Vacancies in the commission shall be filled for the unexpired term by the governor with the advice and consent of the council. The members of said commission may be removed by the governor with the advice and consent of the council for such cause as he shall deem sufficient. The chairman shall be designated by the governor. His annual salary shall be five thousand dollars, which shall be paid in monthly instalments by the city of Boston. The other members shall serve without pay.

SECTION 18. It shall be the duty of the finance commission from time to time to investigate any and all matters relating to appropriations, loans, expenditures, accounts, and methods of administration affecting the city of Boston or the county of Suffolk, or any department thereof, that may appear to the commission to require investigation, and to report thereon from time to time to the mayor, the city council, the governor, or the general court. The commission shall make an annual report in January of each year to the general court.

SECTION 19. Whenever any pay roll, bill, or other claim against the city is presented to the mayor, city auditor, or the city treasurer, he shall, if the same seems to him to be of doubtful validity, excessive in amount, or otherwise contrary to the city's interest, refer it to the finance commission, which shall immediately investi-

gate the facts and report thereon; and pending said report payment shall be withheld.

SECTION 20.¹ The said commission is authorized to employ such experts, counsel, and other assistants, and to incur such other expenses as it may deem necessary, and the same shall be paid by said city upon requisition by the commission, not exceeding in the aggregate in any year the sum of twenty-five thousand dollars, or such additional sums as may be appropriated for the purpose by the city council, and approved by the mayor. A sum sufficient to cover the salary of the chairmen of the commission and the further sum of at least twenty-five thousand dollars to meet the expenses as aforesaid shall be appropriated each year by the said city. The commission shall have the same right to incur expenses in anticipation of its appropriation as if it were a regular department of said city.

SECTION 21. For the purpose of enabling the said commission to perform the duties and carry out the objects herein contemplated, and to enable the mayor, the city council, the governor or the general court to receive the reports and findings of said commission as a basis for such laws, ordinances, or administrative orders as may be deemed meet, the commission shall have all the powers and duties enumerated in chapter five hundred and sixty-two of the acts of the year nineteen hundred and eight and therein conferred upon the commission designated in said act; but counsel for any witness at any public hearing may ask him any pertinent question and may offer pertinent evidence through other witnesses subject to cross-examination by the commission and its counsel.

59. Foreword of the Survey of the Government of the City and County of San Francisco, 1916.

It has generally been found that privately supported research organizations are more active, independent, and scientific than those supported by public funds. In 1916 the San Francisco Real Estate Board appointed a tax committee which determined to secure, through the New York Bureau of Municipal Research, a complete survey of the government of the city and county of San Francisco.

¹ Sections 20, amended by Chap. 81, *Acts of 1921*, now allows for the Finance Commission's annual expenses \$35,000 instead of \$25,000.

To assist in following up the recommendations of the survey, the San Francisco Bureau of Governmental Research was created. The foreword of the San Francisco survey contains a statement of the purposes and methods of the San Francisco Bureau, which may be taken as typical of all similar organizations.

SOURCE—*Report on a Survey of the Government of the City and County of San Francisco.* Prepared for the San Francisco Real Estate Board by the Bureau of Municipal Research, New York (San Francisco, 1916), iii-v.

FOREWORD.

By San Francisco Tax Committee.

Impelled by rapidly rising taxes, the San Francisco Real Estate Board in April, 1916, appointed a Tax Committee to combat unnecessarily increased budget allowances and consequent tax imposition.

This Committee held its first meeting April 4, 1916, and met regularly twice a week thereafter. It soon found that in the short time intervening before the making of the 1916-1917 municipal budget, it would be impossible to secure the necessary information to enable it to make an adequate study of the needs of the several departments in the city government and therefore it would be impossible for it to enter into an intelligent, critical discussion of the proposed items of budget allowances.

It found there was no satisfactory system of accounting in the several city departments from which could be taken a statement of the actual financial condition of the city concerning either past costs or future requirements. It was very plain that for the Committee to criticise intelligently within the time allowed, such a statement was necessary.

From innumerable sources came reports and suggestions concerning inefficiency, waste and proposed methods of saving, and it early became apparent that for the Committee to do any real good it would have to have an unbiased, analytical and constructive survey of the principal departments in the city government and thereafter carry the work forward on a permanent basis.

So impressed were all with the necessity for carrying out the plan that the Bureau of Municipal Research of New York City was employed forthwith to make the survey; following this was begun a campaign for subscriptions to meet the cost thereof. As

always in a worthy cause, San Francisco's citizens responded with alacrity.

In June the experts arrived and began their work. As the survey was being made, so many intricate instances of waste and inefficiency developed that every one concerned appreciated more and more the necessity of following up the recommendations, to appear in the survey report, by active, interested, sustained endeavor for improvement. To assist in accomplishing this it was decided to organize a local bureau of research in San Francisco and on the nineteenth day of October there was incorporated SAN FRANCISCO BUREAU OF GOVERNMENTAL RESEARCH for the following purpose:

"To act as an incorporated, non-political, non-profit-making citizens' agency for securing the highest obtainable degree of efficiency and economy in the transaction of public business, particularly in the municipality of San Francisco, through investigating, collecting, classifying, studying and interpreting facts concerning the powers, duties, actions, limitations, methods and problems of the several departments of government, and making such information available to public officials and citizens, and promoting the development of a constructive program for the city of San Francisco that shall be based upon adequate knowledge and consideration of community needs, thereby encouraging economy and efficiency in the conduct of public business in order that the taxpayers may be assured full return value in services rendered for taxes paid and money spent in governmental cost payments; and further, to do any and all lawful things that may be necessary for or conducive toward the attainment of any and all of the objects and ends hereinbefore expressed."

Many plans for securing efficiency and economy in the government of American cities have been proposed and tried and fallen short of attaining their object, but the "Municipal Research" idea has been a success. Most of the large cities of the United States have greatly improved their governmental service and lessened the cost thereof through the co-operation of their local Bureaus of Municipal Research. The Municipal Research idea is this: That adequate funds be provided by citizens, without regard to party affiliation or governmental alliance, thus enabling a staff of competent men to be employed to find out how the government is organized, what it is doing, what methods are being used, what results are being obtained, how the government can be made more

effective for public service at less cost, and then to co-operate with officials for improvement.

The San Francisco Bureau of Governmental Research will follow this idea in San Francisco. It is financed for five years with an annual income of \$20,000. Its principal program for work is generally and particularly indicated in the following pages of the exhaustive report of the New York Bureau's survey, which is now presented complete to the public and officials of the City and County of San Francisco.

The outlook for the success of the local Bureau is very promising. The attitude of most of the officials and employees of San Francisco, throughout the making of the survey and subsequently, has been that of friendly co-operation and has evidenced a genuine desire for greater efficiency and economy. It is evident that the people of San Francisco are awakening to the real need of these factors to our government. The work is, of course, being done in their behalf and without their support it cannot succeed.

For its success to date, those who have promoted the movement make grateful acknowledgment to the President and Directors of the San Francisco Real Estate Board, to the subscribers to the Survey Fund and to the budget for the Bureau of Governmental Research, to the Mayor, officials and employees of the city who co-operated and assisted in the making of the survey, and to the New York Bureau of Municipal Research, whose representatives courteously and intelligently studied our public business, criticised it frankly, fully and constructively, and retained our friendship and respect.

SAN FRANCISCO TAX COMMITTEE.

60. Purposes of the Detroit Bureau of Governmental Research.

This statement of the purposes of the Detroit Bureau of Governmental Research appears in each number of its publication, *Public Business*. The Detroit Bureau has proved one of the most successful organizations of its kind in the country.

SOURCE—Detroit Bureau of Governmental Research, *Public Business*, Vol. III, No. 15 (Whole No. 95, June 12, 1925), 226.

The Detroit Bureau of Governmental Research is organized to

increase the effectiveness of local government thru coöperation with officials and by keeping citizens informed about the city's business.

The Bureau is absolutely non-partisan, and takes no part in the election or appointment of persons to office.

The cost of the Bureau is financed and controlled by the Detroit Community Fund, but only such contributions are used as are specifically designated to the Bureau by the donors.

61. Purposes of the Rochester Bureau of Municipal Research, 1919.

This is another and fuller statement of the purposes of a bureau of governmental research. It was largely due to the efforts of the Rochester bureau that the city manager amendments to the charter of Rochester were adopted by the people of that city at the November election of 1925.

SOURCE—Rochester Bureau of Municipal Research, *Report on a Proposed Classification of Titles and Positions in the Civil Service of the City of Rochester, N. Y.* (1919), i.

The purpose of the Bureau is two-fold:

- 1.—To get things done for the community through *coöperation with persons who are in office*, by increasing efficiency and eliminating waste.
- 2.—To serve as an independent, non-partisan agency for *keeping citizens informed about the city's business*.

COÖPERATION Every sincere and earnest man in the public service is eager to profit by the experience of others and to use all sources of information as to the methods of conducting public business. He wishes to do his work well, to handle his job efficiently and with a minimum waste of time, money and effort, although he often works under handicaps which should not exist.

This Bureau has placed itself at the service of public officers in Rochester, to assist them in the accomplishment of this purpose. It seeks to do this primarily by getting at facts and profiting by a frank acceptance of their logic. But it strives also to help public officers remove handicaps under which they may work, so that men may be as free in public office as in private business to develop methods and adopt measures for efficiency.

INFORMATION Every good citizen is interested in what government is doing, how it is being done, and what it costs.

It is often difficult, sometimes impossible, for the citizen to get such information from a source that is constant; well-informed and trained in analysis, and therefore reliable; without bias or prejudice, and so entirely trustworthy.

This Bureau has undertaken to furnish such a source of information, in order that the people of Rochester, when they consider their municipal government and discuss its merits or demerits, may be assured that such consideration and discussion rest on a basis of fact.

The Bureau believes that Rochester has good city government. But—with the quality of citizenship here available, with some measure of intelligent planning, of enlightened public coöperation—the Bureau sees no reason why Rochester should not have the most progressive and serviceable municipal government in the United States.

To this end it solicits the continuing interest and coöperation of every public officer and of every citizen.

62. Tax Payers' Association of California.

Another type of municipal reform organization is the so-called Tax Payers' Association of California. It is not entirely municipal in its character, but its most important work has been a study of city and county consolidation in Los Angeles.

SOURCE—*City and County Consolidation for Los Angeles*, Report prepared by Tax Payers' Association of California (Los Angeles, 1917), 3.

“That The Tax Payer's Dollar May Bring The Maximum In Value And Service”

Tax Payers' Association of California undertakes to acquaint its members and the tax-paying public with the essential facts relating to fiscal operations and administrative methods employed by the state and its several political subdivisions, and to promote efficiency and economy in the management of public business. Information

is disseminated through a monthly journal, bulletins, special reports, and through the press, which is lending its hearty and valuable co-operation in the furtherance of this important work. The Association is strictly a citizen agency and maintains no political or official connections.

In order that its recommendations for corrections and improvements may be found sound and practicable, Tax Payers' Association of California conducts thorough, painstaking investigations of those phases of state, county and city government which bear upon the methods and measure of taxation and which relate themselves to the adjustment of governmental practice to the needs and requirements of the tax payers. In these activities the hearty assistance of public officials is sought and received.

Membership in the Association is open to every person, firm, association or corporation in California. Annual dues are fixed at one-half of one per cent of the amount of taxes paid by the member. Voting power is equal among members. Government is vested in an executive committee and the customary officers. Administration of the work is conducted by the Director.

. . . .

63. Constitution of the League of Kansas Municipalities, 1924.

The cities of most states are now united in leagues of municipalities. These organizations hold annual meetings at which city officials gather and discuss questions of current municipal interest. Formerly they did little else than furnish an opportunity for junketing at the city's expense. Several of them, however, now seriously endeavor to secure the improvement of city government. The better leagues of municipalities have paid secretaries, publish monthly or bi-monthly publications, serve as clearing houses for information concerning municipal problems, and facilitate coöperation between municipalities. Several of the leagues are officially connected with the universities of their states, the secretary sometimes being a member of the university faculty. Where this is the case, research work of considerable value is sometimes carried on in connection with university courses in municipal government; the results of the

research are made available to the cities through the league's publication. Among the leagues of municipalities, one of the best organized and most vigorous is that of Kansas.

SOURCE—*Kansas Municipalities*, X, no. 11 (November, 1924), 16-18.
Adopted at the sixteenth annual convention of the league, 1924.

Article 1.—Name and Objects.

Section 1. This organization shall be known as the League of Kansas Municipalities and its objects shall be:

First, to perpetuate and develop the League as an agency for the co-operation of cities of the state of Kansas in the practical study of city affairs;

Second, to promote the application of the best methods in all branches of municipal service by holding at least one convention annually for the discussion of problems in city administration;

Third, to gather and circulate information and experience on the most approved methods of city administration;

Fourth, to secure general municipal legislation which will be beneficial to the cities of the state and citizens thereof and to oppose legislation injurious thereto.

Article 2.—Membership.

Section 1. Any incorporated city in the state of Kansas shall be eligible to membership in this League.

Section 2. When a city becomes a member of the League, any official of such city may be selected as a delegate to any convention of the League by its governing body or City Manager.

Section 3. Any city which shall be in arrears for more than one year's dues shall be stricken from the roll of the League until the dues shall be paid in full.

Section 4. Any city may withdraw from the League upon the payment of all dues then payable and notifying the Secretary in writing.

Article 3.—Fees and Dues.

Section 1. The annual dues for each city shall be based on the population as given by the state census each five years.

Section 2. The dues shall be payable in advance on the first day of July in each year.

Section 3. Dues and subscriptions for each city shall be as follows:

Less than 1,000	\$ 10.00
1,000 to 2,000	15.00
2,000 to 3,000	20.00
3,000 to 5,000	25.00
5,000 to 10,000	40.00
10,000 to 30,000	50.00
30,000 to 50,000	75.00
50,000 to 80,000	100.00
More than 80,000	150.00

Article 4.—Officers and Committees.

Section 1. The officers of this League shall be a president, vice-president, executive secretary, and three trustees.

Section 2. All officers shall be elected at the annual meeting and shall hold office for one year, or until their successors shall have qualified, provided the executive Secretary shall be appointed by the executive committee.

Section 3. The officers of the League shall constitute the executive committee and shall have general supervision of the affairs of the League while the annual convention is not in session.

Section 4. All vacancies in the executive committee shall be filled by appointment by the president, except that of president, which shall be filled by the vice-president until the next annual election.

Section 5. The president with the consent of the other members of the executive committee shall have power to appoint such committees as may be deemed necessary for the proper transaction of the business of the League.

Section 6. The president and executive secretary shall be ex-officio members of the committee on legislation.

Section 7. No committee shall be authorized to create any financial liability unless it shall have been approved both in nature and amount by the president and executive secretary.

Article 5.—Elections.

Section 1. All officers shall be elected at the last session of the annual convention, except the executive secretary who shall hold office at the pleasure of the executive committee.

Section 2. The officers elected shall assume office immediately after the close of the annual meeting.

Section 3. Nominations for elective officers shall be made by a nominating committee of three members chosen by the president on the first day of the annual convention; additional nominations may be made from the floor.

Section 4. No person shall be eligible for the office of president unless he is at the time of his election a delegate and present at convention.

Section 5. No city may vote by proxy and only delegates from cities shall cast the ballot of that city.

Section 6. In all cases where roll call is requested, or in the election of the officers, or in the selection of the convention city, each city represented shall have one vote which shall be the vote of the majority of the delegates of that city.

Section 7. Any elective officer of this organization who retires from his city office shall automatically vacate his office in the League.

Articles 6.—Duties.

Section 1. The duties of the president and vice-president shall be such as are usually performed by officers holding these titles.

Section 2. The Executive Secretary shall cause accurate minutes of the conventions and of the meetings of the executive committee of the League to be kept, shall conduct all correspondence, shall mail notice of all meetings to the mayor and city clerk of each member of the League not less than four weeks before the date thereof; shall collect and receive all fees and dues and keep a book of accounts with the members; he shall also publish the official publication of the League. He may be paid a salary to be fixed by the executive committee each year at the annual convention and shall be allowed the necessary expenses of the conduct of his office.

Section 3. The Executive Secretary shall furnish a bond in an amount to be fixed by the executive committee and approved by them, premium on said bond to be paid out of the funds of the organization.

Section 4. The executive committee shall manage all the affairs of the league while the annual convention is not in session. All questions in executive committee shall be decided by a majority vote

and three shall be a quorum. The executive committee shall meet once a year on the morning of the first day of the annual meeting and at such times as it may be called together by the president or the executive secretary or by any three members thereof.

Article 7.—Conventions.

Section 1. The annual convention of the League shall be held at a time and place to be determined each year by the legislative body of the authorized delegates present at the annual convention.

Section 2. Eleven cities shall constitute a quorum at the annual convention.

Section 3. The annual convention shall last at least two days and the program shall be arranged by the executive committee.

Section 4. The proceedings of the annual convention shall be published in the official publication.

Section 5. At the annual convention of the league the order of business shall be as follows unless changed by a two-thirds vote of the delegates present.

1. Roll Call.
2. President's Address.
3. Report of Secretary-treasurer.
4. Report of the Executive Committee.
5. Report of other committees.
6. Reading and discussion of papers.
7. Question box.
8. Report of auditing committee.
9. Report of the Credentials Committee.
10. Election of officers.
11. Selection of place and time of meeting.
12. Adjournment.

Article 8.—Information Bureau and Official Publication.

Section 1. The executive committee may establish a bureau of municipal information, or may make arrangements with any bureau to perform this service for the League.

Section 2. It shall be the duty of each member of the league through its mayor, council, or city manager or clerk, to furnish to such bureau any information, copies of all official reports and documents of interest for filing in said bureau for the benefit of the other cities which are members of the league.

Section 3. It shall be the privilege of each member of the league through any of its officers to request any special information, relative to municipal government or administration, from such bureau of municipal information.

Section 4. The Executive Secretary shall maintain his office at such bureau of municipal information and shall endeavor so far as within his power, to comply with all reasonable requests made by the members for information.

Section 5. Kansas Municipalities shall be the official organ of the league. It shall be published by the Executive Secretary at his office and shall be sent free of charge to a specified number of the city officials of each member city. Information of general interest and articles on municipal government and administration shall be published in such official organ.

Article 9.—Amendments.

Section 1. This constitution may be amended after the first day of the annual meeting by two-thirds vote of all cities voting, provided the proposed amendment shall have been submitted in writing and read to the delegates on the first day of the annual convention.

STATUTORY AUTHORIZATION¹

SEC. 12-1610. *League of municipalities.* Any city, whether under government by mayor and council, or under government by a board of commissioners, may by ordinance appropriate money out of the general fund to pay the annual dues in the League of Kansas Municipalities not to exceed annually five dollars per each one thousand population or fraction thereof, of such city, and to pay the actual expenses of not more than two delegates to the meetings of such league.

¹ *Revised Statutes of Kansas, 1923.*

PART VII

THE COMMISSION PLAN OF GOVERNMENT

64. Charter of New Orleans, 1870.

The earliest forerunner of the commission form of government, which now prevails in more than 300 cities of over 5,000 inhabitants, was the New Orleans charter of 1870. This charter provided for government by a mayor and seven administrators, each one of whom individually was the head of a department, and who collectively constituted the city council. Unfortunately for the permanent success of this plan in New Orleans, the charter of 1870 was enacted by a carpet-bag legislature, and with the return of white control demand for its repeal became insistent. It was succeeded in 1882 by a charter of the ordinary mayor and council type.

SOURCE—*Acts of the General Assembly of Louisiana*, Extra session, 1870 (New Orleans, 1870), 30-49.

AN ACT to extend the limits of the Parish of Orleans, and to Change the boundaries of the Parishes of Orleans and Jefferson, and to consolidate the cities of New Orleans and Jefferson, and to provide for the administration of the affairs thereof, . . . , and to provide for the funding of the floating indebtedness of the corporations as consolidated by this act.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the following shall constitute the boundaries of the parish of Orleans, on the left bank of the Mississippi river viz.: Commencing on the Mississippi river, at the Fisher's Canal, thence along the left bank of the Mississippi river to the lower boundary line of the present city of Carrollton; thence along said boundary line to a point where it intersects the present boundary line of the city of

New Orleans; thence along said boundary line to Lake Pontchartrain; thence along the lake shore to the lower boundary line of the city of New Orleans; thence along said boundary line to the point of commencement on the Mississippi river; and that so much of the present parish of Jefferson as is contained within the aforesaid boundaries is hereby detached from the parish of Jefferson and annexed to the parish of Orleans.

SEC. 2. *Be it further enacted, etc.* That all that portion of the parish of Orleans situated on the left bank of the Mississippi river, and all that portion of the parish of Orleans situated on the right bank of the Mississippi river shall constitute the parish of Orleans and the city of New Orleans, and that all the inhabitants thereof shall be a body corporate, to be known by the name of the city of New Orleans, and by that name they and their successors shall be known in law, and shall be capable of suing and being sued, and of prosecuting and defending in all courts and in all actions and matters whatsoever; and shall have a common seal, and may alter and change the same at pleasure, and by the same name they shall be capable of holding and conveying any estate, real and personal, for the use of said corporation, under the restrictions and limitations hereinafter set forth; and upon the first organization of the Council, as herein provided, shall be vested with all powers, rights, privileges and immunities incident to a municipal corporation, and necessary for the proper government of the same.

SEC. 3. *Be it further enacted, etc.,* That the city of New Orleans shall be divided into six districts, . . .

SEC. 4. *Be it further enacted, etc.,* That the government of the city of New Orleans, and the administration of its affairs, shall be vested in a Mayor and seven Administrators, to wit: one of Finance, one of Commerce, one of Improvements, one of Assessments, one of Police, who shall be ex-officio a member of the Board of Metropolitan Police, one of Public Accounts, and one of the Water Works and Public Buildings, with administrative and executive functions; and said Mayor and Administrators shall be appointed or elected as hereinafter provided, and shall form the Council of the city of New Orleans. The Governor shall, by and with the advice and consent of the Senate, appoint the Mayor and the seven Administrators, who shall hold their offices until the first Monday of November, 1870, or until their successors are elected and qualified. On the first Monday of November, 1870, there shall be an election for Mayor, the Administrators of Commerce, Police

and Assessments, and every two years thereafter; and on the first Monday of November, 1871, there shall be an election for the Administrators of Finance, Improvements, Public Accounts, Water-works and Public Buildings, and every two years thereafter; said officers, when elective, shall be elected at large by the qualified voters of the city of New Orleans, as constituted by this act.

. . . .¹

SEC. 8. *Be it further enacted, etc.,* That the Mayor shall be the chief executive officer of the city. He shall keep his office in the City Hall; he shall affix the seal of the corporation to all its official acts; he shall see that the laws and ordinances be properly and faithfully executed; he shall be *ex officio* justice and conservator of the peace; he shall call extra meetings of the Council whenever he shall deem the same necessary, or whenever three members of the same shall, in writing, stating the object thereof, request him to do so; he shall, from time to time, lay before the Council a full statement of the affairs of the city. It shall be his duty to report to the Council all officers and persons employed by the city who fail to perform their duty, or commit any act for which they should be removed from office; and may in his discretion suspend any such officer or employe until the action of said Council, to whom he shall report said suspension at their first meeting thereafter. He shall preside at the meetings of the Council, but shall have no vote therein, except when there is a tie, in which case he shall have the casting vote; he shall sign and publish all ordinances and resolutions passed in due form by the Council, and such ordinances and resolutions shall thereupon have the force of law; he shall have general superintendence over the departments of administration and shall lay before the Council every month the monthly reports hereinafter required to be made to him by said departments. His term of office, when elected, shall be for two years; he shall receive a salary of seven thousand five hundred (\$7,500) dollars per annum, payable monthly on his warrant, countersigned by the Administrator of Public Accounts, and shall not be allowed any other fee or compensation whatever; he shall be permitted to appoint a private secretary, and such other clerks as the Council may authorize, whose salaries or compensation shall be

¹Section 5 fixes the qualifications of the mayor and administrators. Section 6 provides for the first meeting of the Council. Section 7 provides for filling vacancies.

fixed by the Council, and shall exercise all other powers heretofore vesting in the Mayor of the city of New Orleans under existing laws, not inconsistent or in conflict with this charter.

SEC. 9. *Be it further enacted, etc.*, That in the administration of the government and affairs of the city, there shall be, in addition and subordinate to the executive powers of the Mayor, seven separate departments, the heads of which shall be known as the administrators of said departments, and shall have the administration of and especial control of the same, subject to the limitations imposed by this act or other laws, or the ordinances and resolutions of the Council, to wit:

First—A Department of Finance, which shall have a general superintendence of all matters relating to the finances of the city of New Orleans, and the receipts and disbursements of the same; shall receive and collect all moneys, bills receivable, dues and assets belonging to the corporation, and shall deposit the same daily in such incorporated bank as the Council shall elect, as the fiscal agent of the corporation, as hereinafter provided, keeping a separate deposit account for each specific fund on account of which deposit is made; shall keep correct accounts of all indebtedness of the city, and make all disbursements for account of the same by checks on said incorporated bank, but shall make no payment or disbursements unless the claim, bill or account for the same shall have been audited by the Administrator of the Department of Public Accounts, and be authorized by ordinance or resolution of the Council, and the warrant therefor shall be duly numbered, indorsed and filed in said department; shall keep correct accounts of the resources, revenues and disbursements of the corporation, which shall at all reasonable times be open to the inspection of the Mayor and members of the Council; shall regulate the collection of all taxes, licenses and dues which may be imposed by the Council; shall prescribe the mode and form of keeping the corporation books and accounts in every department created by this act; and shall be vested with and perform such other functions and duties as may from time to time be prescribed by the Council, and shall exercise all other powers heretofore vesting in the City Treasurer of the city of New Orleans, under existing laws not inconsistent or in conflict with this act.

Second—A Department of Commerce, which shall have general superintendence of all matters relating to markets, railroads, canals,

weights and measures, the fire department and manufactories, and shall be vested with and perform such other functions and duties as may from time to time be prescribed by the Council.

Third—A Department of Assessment, which shall have general superintendence of the assessment of all property in the city of New Orleans, real or personal, for taxation or the imposition of licenses on professions, trades and occupations necessary to produce revenue sufficient to carry on the city government, and pay outstanding debts and contingent expenses; and shall be vested with and perform such other functions and duties as may be prescribed by the Council, and shall exercise all powers and functions heretofore vesting in the Board of Assessors, under existing laws not inconsistent or in conflict with this act.

Fourth—A Department of Improvement, which shall have general superintendence of all matters relating to the streets, sidewalks, pavements and wharves, and the construction, cleansing and repair of the same; the construction and repair of bridges, and the drainage of the city, and shall be vested with and perform such other functions and duties as may be prescribed by the Council.

Fifth—A Department of Police, which shall, so far as the Council may have authority, have general supervision of all matters relating to the discipline and efficiency of the police, the protection of public and private property, the preservation of public order and peace, and the enforcement of the city ordinances relative thereto, the houses of refuge and correction, and lighting of the city; and shall be vested with and perform such other functions and duties as may be prescribed by the Council; *Provided*, That no authority or duty herein conferred or imposed upon said department, or upon the Council or Mayor, shall conflict with or impair any of the powers, duties or rights now conferred by existing laws upon the Board of Metropolitan Police or their officers.

Sixth—A Department of Public Accounts, which shall have general superintendence of all claims and demands against the city of New Orleans, and of all contracts entered into by the city; shall keep a record of all ordinances making appropriations for general and special claims; shall issue warrants on the Department of Finance for the payment of all claims; the said warrants to be consecutively numbered, corresponding to the number of vouchers upon which they are issued, and shall specify the account or fund upon which they are drawn; shall in the months of January and July of each year, lay before the Council a report of the claims and

accounts against the city, warranted for during the preceding six months, with a full detail of the names of persons to whom issued, the amount thereof, the number of the warrant, and the number and date of the ordinance or resolution authorizing the same. The report shall also embrace a statement of the indebtedness of the city, showing in detail all outstanding obligations, their date, amount, to whom and for what issued, when due, and under what ordinances and resolutions authorized. It shall also contain estimates for the receipts and expenditures for the current six months. No warrant shall be drawn by said department upon the Department of Finance, unless there are funds in this department to meet the same; and the administrator of this department shall be vested with and perform such other functions and duties as may be prescribed by the Council, and heretofore vesting in the Controller of the city of New Orleans, under existing laws not in conflict or inconsistent with this act.

Seventh—A Department of Waterworks and Public Buildings, which shall have general superintendence of the waterworks, school-houses, hospitals, asylums, and shall be vested with and perform such other functions and duties as may be prescribed by the Council.

SEC. 10. *Be it further enacted, etc.*, That the administrators of the foregoing departments shall, at the end of every month, render to the Mayor a written report of the administration of their departments during that month, their actual and their respective condition. They shall each receive an annual salary of six thousand dollars, payable monthly upon their own warrants, approved by the Mayor, and shall not be allowed any other compensation or fee whatever. They shall keep their offices in the City Hall, and the same shall be open for the transaction of business daily, Sundays and legal holidays excepted, from 9 A. M. to 3 P. M.

SEC. 11. *Be it further enacted, etc.*, That the Council shall organize the departments established by the foregoing section, regulate the number of clerks and officers to be employed by each department, and the amount of their salaries. Said clerks and officers shall be recommended for appointment by the administrators of said departments respectively, and be appointed by the Council; they may be suspended by said heads of departments respectively, at pleasure, and in the case of such suspension it shall be reported to the Council at its first meeting thereafter, together with the cause thereof. The Council may remove, by a vote of a

majority of the members, any of said clerks or officers for incompetency, neglect of duty, malfeasance in office, and when reported by the heads of departments, when the services of such officer or employe be no longer necessary to the public interest. . . .

65. Organic Act of the District of Columbia, 1878.

In 1873 the District of Columbia was bankrupt. The commission appointed to investigate its affairs recommended what was in effect a receivership. An act of Congress, passed June 20, 1874, temporarily vested the government of the District in three commissioners, appointed by the President by and with the consent of the Senate. No one at the time had any idea that this form of government would be permanent, but when the Organic Act of the District became a law in 1878 it perpetuated the legislation of 1874. The District of Columbia is still governed under this act of 1878. There seems to be no prospect of the introduction of self-government in the District, in spite of periodic agitation for it. The government of the United States has in late years paid forty per cent of the expense of the District government; besides, both parties in Congress desire to avoid the embarrassing question of negro suffrage.

SOURCE—*United States Statutes at Large*, XX (1877-1879), 102-108, (Fifty-fifth Congress, Second Session, 1878, Chap. 180). Reprinted in: *Sixty-third Congress, First Session, Senate Document No. 5. Organic Acts of the District of Columbia* (Washington, 1913), 9-15.

An act providing a permanent form of government for the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the territory which was ceded by the State of Maryland to the Congress of the United States for the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. Said District and the property and persons that may be therein shall be subject to the following provisions for the government of the same, and also to any existng laws applicable

thereto not hereby repealed or inconsistent with the provisions of this act. The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes relating to said District, and the Commissioners herein provided for shall be deemed and taken as officers of such corporation; and all laws now in force relating to the District of Columbia not inconsistent with the provisions of this act shall remain in full force and effect.

SEC. 2. That within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided, and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army. The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur, thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law; and said Commissioners appointed from civil life, shall each receive for his services a compensation at the rate of five thousand dollars, per annum, and shall before entering upon the duties of the office, each give bond in the sum of fifty thousand dollars, with surety as is required by existing law. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be

one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District.

SEC. 3. That as soon as the Commissioners appointed and detailed as aforesaid shall have taken and subscribed the oath or affirmation hereinbefore required, all the powers, rights, duties, and privileges lawfully exercised by, and all property, estate, and effects now vested by law in the Commissioners appointed under the provisions of the act of Congress approved June twentieth, eighteen hundred and seventy-four, shall be transferred to and vested in and imposed upon said Commissioners; and the functions of the Commissioners so appointed under the act of June twentieth, eighteen hundred and seventy-four, shall cease and determine. And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid; but said Commissioners, in the exercise of such duties, powers, and authority, shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress. The Commissioners shall have power to locate the places where hacks shall stand and change them as often as the public interests require. Any person violating any orders lawfully made in pursuance of this power shall be subject to a fine of not less than ten nor more than one hundred dollars, to be recovered before any justice of the peace in an action in the name of the Commissioners. All taxes heretofore lawfully assessed and due, or to become due, shall be collected pursuant to law, except as herein otherwise provided; but said Commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidence thereof, but may borrow, for the first fiscal year after this act takes effect, in antici-

pation of collection of revenues, not to exceed two hundred thousand dollars, at a rate of interest not exceeding five per centum per annum, which shall be repaid out of the revenues of that year. And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law; said Commissioners shall have power to erect, light, and maintain lamp-posts, with lamps, outside of the city limits, when, in their judgment, it shall be deemed proper or necessary: *Provided*, That nothing in this act contained shall be construed to abate in any wise or interfere with any suit pending in favor of or against the District of Columbia or the Commissioners thereof, or affect any right, penalty, forfeiture, or cause of action existing in favor of said District or Commissioners, or any citizen of the District of Columbia, or any other person, but the same may be commenced, proceeded for, or prosecuted to final judgment, and the corporation shall be bound thereby as if the suit had been originally commenced for or against said corporation. The said Commissioners shall submit to the Secretary of the Treasury for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and annually thereafter, for his examination and approval, a statement showing in detail the work proposed to be undertaken by them during the fiscal year next ensuing, and the estimated cost thereof; also the cost of constructing, repairing, and maintaining all bridges authorized by law across the Potomac River within the District of Columbia, and also all other streams in said District; the cost of maintaining all public institutions of charity, reformatories, and prisons belonging to or controlled wholly or in part by the District of Columbia, and which are now by law supported wholly or in part by the United States or District of Columbia; and also the expenses of the Washington Aqueduct and its appurtenances; and also an itemized statement and estimate of the amount necessary to defray the expenses of the government of the District of Columbia for the next fiscal year: *Provided*, That nothing herein contained shall be construed as transferring from the United States authorities any of the public works within the District of Columbia now in the control or supervision of said authorities. The Secretary of the Treasury shall carefully consider all estimates submitted to him as above provided and shall approve, disapprove, or suggest such changes in the same, or any item thereof, as he may think the public interest demands; and after he shall have considered and

passed upon such estimates submitted to him, he shall cause to be made a statement of the amount approved by him and the fund or purpose to which each item belongs, which statement shall be certified by him, and delivered, together with the estimates as originally submitted, to the Commissioners of the District of Columbia, who shall transmit the same to Congress. To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia;¹ and all proceedings in the assessing, equalizing, and levying of said taxes, the collection thereof, the listing return and penalty for taxes in arrears, the advertising for sale and the sale of property for delinquent taxes, the redemption thereof, the proceedings to enforce the lien upon unredeemed property, and every other act and thing now required to be done in the premises, shall be done and performed at the times and in the manner now provided by law, except in so far as is otherwise provided by this act: *Provided*, That the rate of taxation in any one year shall not exceed one dollar and fifty cents on every one hundred dollars of real estate not exempted by law; and on personal property not taxable elsewhere, one dollar and fifty cents on every one hundred dollars, according to the cash valuation thereof: *And provided further*, Upon real property held and used exclusively for agricultural purposes, without the limits of the cities of Washington and Georgetown, and to be so designated by the assessors in their annual returns, the rate for any one year shall not exceed one dollar on every one hundred dollars. The collector of taxes, upon the receipt of the duplicate of assessment, shall give notice for one week, in one newspaper published in the city of Washington, that he is ready to receive taxes; and any person who shall, within thirty days after such notice given, pay the taxes assessed against him, shall be allowed by the collector a deduction of five per centum on the amount of his tax; all penalties imposed by the act approved March third, eighteen hundred and seventy-seven, chapter one hundred and seventeen, upon delinquents for default in the payment of taxes levied under said act, at the times

¹ This division of expenses has been changed by Congress from time to time, varying from the appropriation by Congress of forty per cent, to the contribution of a lump sum.

specified therein, shall, upon payment of the said taxes assessed against such delinquents within three months from the passage of this act, with interest at the rate of six per cent thereon, be remitted.

SEC. 4. That the said Commissioners may, by general regulations consistent with the act of Congress of March third, eighteen hundred and seventy-seven, entitled "An act for the support of the government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for other purposes," or with other existing laws, prescribe the time or times for the payment of all taxes and duties of assessors and collectors in relation thereto. All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations to be made by Congress as aforesaid, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the auditor of the District of Columbia, certified by said Commissioners, or a majority of them; and the accounts of said Commissioners, and the tax-collectors, and all other officers required to account, shall be settled and adjusted by the accounting-officers of the Treasury Department of the United States. Hereafter the Secretary of the Treasury shall pay the interest on the three-sixty-five bonds of the District of Columbia issued in pursuance of the act of Congress approved June twentieth, eighteen hundred and seventy-four, when the same shall become due and payable; and all amounts so paid shall be credited as a part of the appropriation for the year by the United States toward the expenses of the District of Columbia, as hereinbefore provided:

. . . .¹

SEC. 6. That from and after the first day of July, eighteen hundred and seventy-eight, the board of metropolitan police and the board of school trustees shall be abolished; and all the powers and duties now exercised by them shall be transferred to the said Commissioners of the District of Columbia, who shall have authority to employ such officers and agents and to adopt such provisions as may be necessary to carry into execution the powers and duties devolved upon them by this act. And the Commissioners of the District of Columbia shall from time to time appoint nineteen persons, actual residents of said District of Columbia, to constitute the trustees of public schools of said District, who shall serve with-

¹ SEC. 5 provides for the construction and financing of pavements and other public works.

out compensation and for such terms as said Commissioners shall fix. Said trustees shall have the powers and perform the duties in relation to the care and management of the public schools which are now authorized by law.

SEC. 7. That the offices of sinking-fund commissioners are hereby abolished; and all duties and powers possessed by said commissioners are transferred to, and shall be exercised by, the Treasurer of the United States, who shall perform the same in accordance with the provisions of existing laws.

SEC. 8. That in lieu of the board of health now authorized by law, the Commissioners of the District of Columbia shall appoint a physician as health officer, whose duty it shall be, under the direction of the said Commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Commissioners; and the board of health now existing shall, from the date of the appointment of said health-officer, be abolished.

...¹

SEC. 12. That it shall be the duty of the said Commissioners to report to Congress at the next session succeeding their appointment a draft of such additional laws or amendments to existing laws as in their opinion are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia; and said Commissioners shall annually report their official doings in detail to Congress on or before the first Monday of December.

SEC. 13. That there shall be no increase of the present amount of the total indebtedness of the District of Columbia; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, except to the amount of the two hundred thousand dollars, as authorized by this act, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding ten years and by fine not exceeding ten thousand dollars.

...²

SEC. 15. That all laws inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved, June 11, 1878.

¹ Sections 9-11 authorize the commissioners to appoint sanitary inspectors and clerks, subordinate to the health officer, and fix their salaries, as well as that of the health officer.

² Section 14 exempts all educational institutions from taxation.

66. The Government of the Taxing District of Shelby County (Memphis), Tennessee, 1879.

The charter of Memphis was repealed in 1879.¹ The city, which had lately undergone the ravages of a terrible yellow fever epidemic, was at the time bankrupt. The legislature passed three acts, one abolishing the city of Memphis, the second providing for the government of the territory of the former city as the Taxing District of Shelby County, and the third for the administration of the assets of the old city for the benefit of its creditors. The form of government provided for the Taxing District presents some of the elements of the later commission governments.

SOURCE—*Acts of the State of Tennessee*, 1879 (Nashville, 1879), Chap. XI.

A BILL to establish Taxing Districts in this State and to provide the means of local government for the same.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the several communities embraced in the territorial limits of all such municipal corporations in this State, as have had, or may have their charters abolished, or as may surrender the same under the provisions of this Act, are hereby created taxing districts, in order to provide the means of local government for the peace, safety and general welfare of such districts.

SEC. 2. *Be it further enacted*, That the necessary taxes for the support of the governments thus established, shall be imposed directly by the General Assembly of the State of Tennessee, and not otherwise. In administering the affairs, and for providing the means of local government in said districts, the following agencies and governing instrumentalities are hereby established:

1st. A Board of Fire and Police Commissioners to be selected and qualified in the manner hereafter provided.

2nd. A Committee on ordinances or local laws—to be known as the "Legislative Council of the taxing district," and which shall consist of the Commissioners of the Fire and Police Board, and the Supervisors of the Board of Public Works.

3rd. A Board of Health, to consist of the Chief of Police, a health officer, and one physician, who shall have been in active practice for the period of five years, next preceding his appoint-

¹See § 35, above.

ment, who shall be an inhabitant of the taxing district, and for five years a resident of the county, and who shall be *ex officio* President of the Board.

4th. A Board of Public Works, to consist of five Supervisors of Public Works, three of whom shall be chosen by the qualified voters of the people of the taxing district, and two appointed as hereinafter provided, and shall serve for a term of two years.

SEC. 3. Be it further enacted, That the local government established by this Act, shall have power to establish work-houses and houses of correction, to declare by local laws, what acts shall be misdemeanors, and when committed within the taxing districts, to punish the offenders by fines and forfeitures, and by imprisonment and labor, within and without the work-house, in default of payment of the fines imposed as punishment; to cause the arrest of all vagrants, tramps, and drunken and disorderly persons, within the taxing district, and provide for the punishment of the same in the manner above provided; to prohibit by fine the introduction of paupers into the taxing district by steamboats, railroads, or other carriers of persons; to regulate and suppress disorderly houses and houses of ill fame; to regulate and suppress gaming houses, and punish gaming by fine and imprisonment; to arrest and confine for trial, or take forfeit for the appearance for trial, of all persons charged with offenses which are punished as misdemeanors by the laws of the taxing district.

All necessary Judicial Authority is hereby vested in the President of the Board of Fire and Police Commissioners, to hear and determine all cases of offenders against the ordinances or local laws of said taxing district, and to impose fines, or to commit such offenders when found guilty under the said ordinances or local laws of said taxing district, said governments shall have the power to pass all laws to preserve the health of the taxing district; to define, prevent and remove nuisances within the taxing district. . . .¹ And they shall have power over all other affairs in the taxing districts in which the peace, safety or general welfare of the inhabitants is interested.

SEC. 4. *Be it further enacted*, That the Legislative Council, as established in Section 2 of this Act, shall be vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the general laws, for every object, matter and subject within the local governments instituted by this Act. Said

¹ There follows a detailed grant of powers.

Council shall convene, when required to do so by the Chairman of the Board of Fire and Police Commissioners; shall have power to elect a presiding officer, to adopt rules for the government of its proceedings, and may adjourn and meet at its pleasure. The Secretary of the Board of Fire and Police Commissioners shall act as Secretary of the Council, record its proceedings, and preserve its records and documents; he shall also be Clerk of the Board of Public Works. The powers of the Legislative Council are restricted to the business alone of making ordinances or local laws, for the taxing district, except as hereinafter provided.

SEC. 5. *Be it further enacted*, That the Board of Fire and Police Commissioners shall consist of three Commissioners, who shall be at least thirty years of age, residents of the county at least five years before their appointment and election, and taxpayers of the taxing district. Two of said Commissioners shall be appointed by the Governor of the State,¹ by and with the advice and consent of the Senate, and one shall be elected by the qualified voters of the tax-paying district, at an election to be held by the Sheriff of the county for the purpose, as other popular elections are held; they shall hold their offices for a term of two years. The Commissioner appointed by the Governor shall be President of the Board of Fire and Police Commissioners, and shall be the chief executive officer of the taxing district. He shall receive a salary of \$2,000 per annum, and shall devote his entire time and attention to the duties of his office.

Each of the Commissioners shall receive a salary of \$500 per annum. After the expiration of the term of the Board of Commissioners first selected, their successors shall be elected by the qualified voters of the district.

The Governor shall appoint within ten days after the passage of this Act; the quarterly Court shall elect at its first term thereafter; and the Sheriff shall, as soon as this Act passes, give notice and hold an election of the other Commissioners. *Provided*, however, that when the charter of any municipal corporation shall not have been abolished or surrendered at the time this Act takes effect, then said appointments and said election shall take place as soon as practicable after the abolition or surrender of the charter. If the Senate is not in session at the time of the appointment, the Governor

¹ This is an error in the publication of the act; the governor appointed one of the commissioners; one was elected by the voters of the district; and the third was elected by the Quarterly Court. Cf. Sec. 7.

shall make the appointment, and the Commissioner so appointed shall act in the interim until the next meeting of the Senate, when his name shall be submitted for ratification. The Commissioner appointed by the Governor may be removed for malfeasance in office, and any vacancy occurring in the office of said Commissioner from any cause, may be filled by the Governor *ad interim*. Said Commissioners shall establish rules for their own government, and shall hold stated meetings for the transaction of business, and may employ a Secretary to keep a full record of all their proceedings, at a salary not exceeding \$800 per annum. Each member of said Board of Fire and Police Commissioners shall give bond in the sum of twenty thousand dollars, for the faithful discharge of his duty, and he shall not be, when appointed or elected, in arrears for any taxes. Each Commissioner, before entering upon his duty shall take oath that he is not under any direct or indirect obligation to appoint any person to the office of policeman, or fireman or other employes, that he will faithfully discharge the duties of the office. The said Police Commissioners, any two assenting, shall have the power to appoint all officers and subordinates in the police and fire service, including the Chief of Police, and to suspend and discharge the same at will. As soon as said police are appointed, a list shall be furnished the Chief of Police, and the policemen are thereafter to be under the control of the Chief of Police, unless removed by the Board of Commissioners. The day and night police, exclusive of the Chief, shall consist of one policeman to every 1,000 inhabitants by the Federal census of 1870. The Police Commissioners are authorized to adopt rules and regulations of general discipline which it is the duty of the Chief to enforce. The said Commissioners, any two assenting, shall appoint the Chief of the fire department and all subordinates, and suspend and discharge the same at will. As soon as the firemen are appointed, a list shall be furnished the Chief of the fire department, and the firemen are to be thereafter under his control, unless removed by the Board of Commissioners. The Commission is authorized to adopt rules of discipline, which it is the duty of the Chief to enforce. The Commission shall employ no more men in the fire department than are absolutely necessary to successfully manage the engines, hook and ladders, hose carriages, etc., required for the extinguishing of fire.

SEC. 6. *Be it further enacted*, That in addition to the other duties prescribed for the Fire and Police Commissioners by this

Act, they shall exercise supervision over the paving and repairs of streets, the construction of drains and sewers, and other sanitary work, bridges, wharves, and the lighting of the city, and may, for this purpose, employ a competent civil engineer, at a salary not to exceed \$2,000 per annum; and shall have power to enter into all necessary contracts for all of said works, subject to the limitations and restrictions of this Act.

SEC. 7. *Be it further enacted*, That there shall be appointed and elected five discreet persons, who shall be the Supervisors of Public Works, and constitute a Board of Public Works, one of whom shall be appointed by the Governor, at the same time and in the same manner he appoints one of the Fire and Police Commissioners, one of whom shall be appointed by the Quarterly Court; at the same time and in the same manner it appoints one of the Commissioners of the Fire and Police; and the other three shall be elected biennially by the qualified voters of the taxing district, on the first Tuesday in April. After the expiration of the term of office of the first Board of Public Works, selected as herein provided, their successors shall be elected by the qualified voters of the district, but vacancies in the offices of Fire and Police Commissioners and Board of Public Works shall be filled for the unexpired term by the Quarterly Court, which term shall be to the next regular biennial election. The members of said Board shall be residents of said districts for not less than five years immediately preceding their election, and not less than twenty-five years old, and chosen for their well known integrity and capacity for the duty required of them, and shall not be in arrears for any taxes. They shall serve without compensation. The election shall be held by the Sheriff of the County, as other popular elections are held. The members of said Board, before entering upon the discharge of their duties, shall severally take an oath before the Clerk of the County Court that they will faithfully and impartially discharge the duties of their offices, and that they will not become interested, directly or indirectly, nearly or remotely, for themselves or for others, in any contract for work, materials or supplies, or service or purchase, made by the Fire and Police Commissioners. The said Fire and Police Commissioners shall, in every case, before entering into any contract for any purpose, advertise daily for one week or more for sealed proposals for the work to be done, materials to be furnished, or service to be performed, and shall open all the bids on the day named in the advertisement, in the

presence of a quorum of not less than three of the members of said Board of Public Works, and shall enter such bids with the names of the bidders in a book to be kept for that purpose, which book shall at all times be open to the inspection of the taxpayers, and every bid shall remain at least one week open for canvass and discussion after the opening, before any contract shall be awarded upon it, and after that time the award shall be made, if at all, to the lowest responsible bidder, who shall in all cases be required to give ample bond and security for its performance, the bond and security to be approved by the Supervisors of Public Works, and the Fire and Police Commissioners who sign the contract. But no contract shall be made which does not receive the assent of at least two of said Police and Fire Commissioners, and at least four of the members of said Board, and all contracts, of every description, shall be in writing, and shall be signed by all the Commissioners assenting thereto, and be approved in writing by all the members of said Board assenting thereto, and shall be signed as well by the other contracting party, and shall be recorded in full in a well bound book, open for the inspection of the tax-payers at all times. The Fire and Police Commissioners shall in every case, before advertising for proposals, submit to the Board a statement in writing with estimate of cost of the proposed work to be done, material to be furnished, or service to be rendered, and unless the same receive the written sanction of at least four members of said Board, it shall not be advertised nor undertaken, said written sanction to be endorsed on the statement and estimate made by said Commissioners, and to be kept on file in their office. The said Board shall hold stated meetings for the transaction of business. It shall be a felony for any member of said Board or any member of said Commission to become interested, directly or indirectly, nearly or remotely, in any contract of any kind made in behalf of said district, and upon conviction the guilty party shall suffer imprisonment in the State Penitentiary, at hard labor, for not less than five nor more than ten years, and shall be forever rendered infamous, ineligible to any office of honor or profit in this State. *Provided*, that it shall be the duty of the Sheriff to hold the first election for Supervisors of Public Works as soon as this Act takes effect, as to all communities to which this Act applies, and whose charters are abolished at the time it takes effect. . . .¹

¹Sections 8-11 relate to the salaries of the police and firemen; the annual tax rate and tax administration; and the wharfage dues.

SEC. 12. *Be it further enacted*, That said Commissioners shall not issue any bonds, notes, scrip, or other evidences of indebtedness, and shall in no event contract for work, or material, or services, in excess of the amount of tax levied for such work, material or service for that year, and parties contracting with said Commissioners for work, material or services, shall look alone to the tax for that purpose for that year, and no subsequent tax shall be levied to meet the deficit, and no property, real or personal, held by said Commissioners, for public use, shall ever be subject to execution or attachment, or seizure under any legal process, for any debt created by said Commissioners, and all taxes due or moneys in the hands of the County Trustee, or on deposit, shall be exempt from seizure under attachment, execution, garnishment, or other legal process; nor shall said Commissioners or the County Trustee be liable to garnishment. And said Commissioners, and said Trustee, and other governing agencies, employed by this Act, are expressly prohibited from levying any taxes for any purpose, that power being reserved to the Legislature, and no writ of mandamus or other process shall lie to compel them to levy any taxes; nor shall the said Commissioners or said Trustee, nor the local government created by this Act pay or be liable for any debt created by said extinct corporation, nor shall any of the taxes collected under this Act ever be used for the payment of any of said debts.

SEC. 13. *Be it further enacted*, That said Commissioners shall make to the Governor a biennial report, three weeks before the convening of the regular sessions of the Legislature, showing in detail all their acts and doings, and all their expenditures in each of the several departments, and the amount of work accomplished in each. And said Commissioners shall require of the County Trustee quarterly exhibits of his collections and disbursements under this Act, and examine his books quarterly, to see that they are correct, and the fund properly accounted for. The County Trustee shall, in addition to the compensation provided for in Chapter XCI, Section 10, page 132, of Acts of General Assembly, passed March 23d, 1875, receive for collecting and disbursing the revenue of said taxing district the sum of (\$1,000) one thousand dollars per annum. . . .

SEC. 15. *Be it further enacted*, That the President of the Board of Health shall be appointed annually by the Legislative Council, upon the nomination of the Chairman of the Board of Fire and Police Commissioners. The Board of Fire and Police Com-

missioners shall appoint, in addition to the policemen hereinbefore provided for, one other policeman, who shall receive the same compensation as the others, but he shall be detailed by the Chairman of said Board to act as Health Officer, and as such shall constitute part of the Board of Health. There may be also a Secretary of the Board of Health, to be appointed by the President of the Board of Health, and may be allowed for his services a sum not exceeding \$75 per month. The compensation of the President of the Board of Health shall not exceed \$100 per month. The expenditures for these salaries shall be borne by the tax provided for the health service.

SEC. 16. *Be it further enacted*, That the President of the Board of Fire and Police Commissioners shall be the executive officer of the taxing district. He shall see that all the laws of the taxing district are enforced through the heads of police, fire and health service. The heads of each of these departments shall audit all accounts against it, but before payment they shall be acted upon and approved by the Board of Police and Fire Commissioners, which shall hold sessions at least once per month, for the purpose of auditing accounts against the taxing district. All sessions of this Board shall be opened and held in any suitable building in the taxing district belonging to the public, or in the County Court room of the court house of the county at such times as the court room is not being used by the County Court. In case of the temporary absence or sickness of the Chairman of the Board of Police and Fire Commissioners, the Commissioner chosen by the popular vote shall discharge, for the time being, the duties of the Chairman of the Board.¹ The Quarterly Court of the County in which the taxing district is located shall have power to remove either of the said Commissioners for malfeasance or misfeasance in officers or for habitual drunkenness, or grossly immoral conduct. In case of permanent, physical or mental incapacity to serve, or removal from the district, the County Court shall declare the office vacant. Vacancies in the office of the Commissioner appointed by that body, and of the Commissioner elected by popular votes shall be filled by the Quarterly Court for the unexpired term. The Board of Fire and Police Commissioners shall render to each Quarterly Court a tabulated statement of the receipts, accounts, disburse-

¹ This is the phraseology of the act. The act contains several illustrations of the desirability of careful proof-reading, especially in official documents.

ments, of all the branches of service, of the local government, and all of its official acts for the preceding quarter, which shall be filed and preserved by the County Court, and such action may be had thereon as the public welfare may require. The Chairman of the Board of Fire and Police Commissioners shall furnish all necessary books and stationery for the use of the taxing district, which shall be paid for by him out of the taxes provided for the support of the local government of the district. . . .

SEC. 22. *Be it further enacted*, That whenever any community under the government of a municipal corporation at the time this Act takes effect having a population of less than 35,000 inhabitants according to the Federal census of 1870, may desire to be governed by the provisions of this Act, the authorities of such corporation shall cause an election of the qualified voters of such municipal corporation to be held, as other popular elections are held, and if at such election, a majority favor the form of local government prescribed by this Act, the officer holding the election shall give his official certificate showing that fact, and it shall thereupon be the duty of the authorities of such municipal corporation to tender in writing to the Governor, a proposal to surrender to the State all corporate power, which shall be accompanied by the said certificate of election. It shall thereupon be the duty of the Governor to accept, on behalf of the State, the proposed surrender of the charter, and the Governor shall cause said certificate of election, and proposal to surrender the charter, and his acceptance of the same, to be duly recorded by the Secretary of State in the book kept by him touching the organization of corporations under the general law on that subject, and as soon as such registration by the Secretary of State is made, the said community shall be governed by the provisions of this Act, and its former organization shall wholly cease to exist for any purpose whatever; *Provided*, that if the rate of taxation imposed by this Act should be in excess of what the community thus adopting the taxing district form of government needs for support of its local affairs, or if the regulations provided by this Act in regard to the fire and police and health service, should be inapplicable to the condition and circumstances of such taxing district; then and in that case, the Board of Fire and Police Commissioners of such district shall have the power to suspend the collection of so much of the taxes as may not be needed for the support of the local government, and also to make

such regulations on the subject of fire, police and health services as will meet the wants of such taxing district. . . .

SEC. 25. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed January 29, 1879.

Approved January 31, 1879.

67. Charter of Galveston, 1901.

In September, 1900, a hurricane piled the waters of the Gulf of Mexico upon the low-lying spit of sand on which Galveston stands. Nearly seven thousand lives were lost, and over four thousand homes were swept away. The old government of the city collapsed, and no one paid further attention to the mayor and aldermen. The actual work of meeting the emergency was directed by a committee of the Chamber of Commerce, which proposed to the Texas legislature at its 1901 session that the government of Galveston be vested in a commission of five members. The original intention was that all five should be appointed by the governor, but this plan was so vigorously opposed that two were made elective by the people. Within a year the Court of Criminal Appeals held that all of the commissioners must be elected; and the charter was so amended in 1903. Thus, what might have been only an emergency measure became a plan of government, based upon popular election, which might reasonably be adopted by other communities. The success of the Galveston experiment was very striking, and in a few years the commission plan had spread to all parts of the United States.

SOURCE—*Special Laws of the State of Texas*, Regular Session, 1901 (Austin, 1901), Chap. XII, 104-146. Only the sections most important for the study of the commission plan are reproduced here.

AN ACT to incorporate the City of Galveston and to grant it a new charter; and to repeal all pre-existing charters.

SEC. 5. There shall be appointed by the Governor of the State, as soon as possible after the passage of this act, three commissioners, one of whom he shall select and designate as president

of the board of commissioners provided for herein, and within ten days after the passage of this act it shall be the duty of the commissioners court of Galveston county to order an election to be held in the city of Galveston, at which election the qualified voters of the city of Galveston shall select two other commissioners, who, together with the three commissioners appointed by the Governor, shall constitute the board of commissioners of the city of Galveston.

In ordering such election, the commissioners court shall determine the time and the places in the city of Galveston for holding such election, and the manner of holding the same shall be governed by the laws of the State regulating general elections. Each of said five commissioners shall be over the age of 25 years, citizens of the United States and for five years immediately preceding their appointment or election residents of the city of Galveston. Each of said five commissioners shall hold office for two years from and after the date of his qualification and until his successor shall have been duly appointed or elected, as the case may be, and duly qualified.

Said board of commissioners shall constitute the municipal government of the city of Galveston.

. . . .

SEC. 7. Said commissioners shall collectively constitute and be known as the "Board of Commissioners of the City of Galveston." They shall take an oath to faithfully perform the duties of their said office, and each shall receive as compensation for his said services the sum of five hundred (500) dollars per annum, payable in equal monthly installments, except that the president of said board shall receive a salary of three thousand (3000) dollars per annum, payable in equal monthly installments, and said president shall devote at least six hours a day to the duties of his office and to the affairs of said city.

SEC. 8. That each commissioner, before entering upon the duties of his office, shall give bond, payable to the Governor of the State, for the use and benefit of said city, in the sum of five thousand (5000) dollars, for the faithful discharge of his duty, with two or more good and sufficient sureties, to be approved by the county judge of Galveston county, and shall in addition to taking the oath prescribed by the Constitution of the State, also take an oath that he is not under any direct or indirect obligation to appoint or elect any person to the office of policeman or fireman, or to any other office, position or employment under said government.

The said commissioners shall by a majority vote of all the commissioners appointed and elected under this act have the power to appoint all officers and subordinates in all of the departments of said city, and to suspend and to discharge the same for cause, at will, under the limitations hereinafter provided. Each commissioner appointed by the Governor of the State shall qualify as provided by this section within ten days after his appointment, and each commissioner elected under the provisions of this act shall qualify, as provided by this section, within ten days after the delivery to him by the county judge of Galveston county of a certificate of his election.

SEC. 9. Any member of said board of commissioners who holds his office by virtue of appointment by the Governor of the State, may be removed by the Governor of the State for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the Legislature thereafter. But in no case shall the Governor of the State remove the two commissioners, or either of them, that have been elected under the provisions of this charter. Such two members may be removed for the same reasons and in the same manner as county officers.

SEC. 10. Resignation by any of the commissioners appointed or elected under this act shall be made in writing to the Governor for his action, and resignation by any of the other officers of said city shall be made in writing to the said board of commissioners for their action thereupon. In case of the removal of any commissioner from the territorial limits of such city, such removal shall ipso facto be deemed to create a vacancy in the office of such commissioner. In case of the death, resignation, removal from office, or removal from the territorial limits of the said city of any member of the board of commissioners, appointed by the Governor, the Governor of the State upon being informed of the fact of such vacancy shall fill any such vacancy for the unexpired term by appointment. In case of the death, resignation, removal from office, or removal from the territorial limits of said city, of either or both of the two commissioners elected, any such vacancy shall be filled in the manner provided by the Constitution of this State, for filling vacancies in State or district offices other than members of the Legislature.

SEC. 11. Said board shall, at the first meeting after their qualification, or as soon thereafter as practicable, organize by the

election of some competent man to be the secretary of said board, who shall keep the minutes and records of all their proceedings in a well bound book kept for that purpose, and shall perform such other duties as may be required of him by said board, and shall receive a salary not to exceed twelve hundred (1200) dollars per annum. The president of said board shall have the right to vote, as a member thereof, on all questions which may arise. Said board of commissioners shall have the power to summon and compel the attendance of witnesses, and the production of books and papers before them, whenever it may be necessary for the more effective discharge of their duties; and shall have the power to punish for contempt of said board with the same fines and penalties as the county judge may punish for contempt of the county court. All process necessary to enforce the powers conferred by this section shall be signed by the president of the board, and attested by the secretary thereof, and shall be served by any member of the police force of said city.

SEC. 12. Said board of commissioners so constituted shall have control and supervision over all the departments of such city and to that end shall have power to make all such rules and regulations as they may see fit and proper, concerning the organization, management and operation of such departments; and shall have power, under such rules and regulations as they shall make, to appoint, and, for cause which to said board shall seem sufficient, and after an opportunity to be heard, to discharge all employes, including the chiefs of the departments respectively. Said commissioners shall have sole authority to pass and adopt all such rules and regulations concerning all of the departments of such city and the other agencies created by them for the administration of its affairs.

And in addition to the powers aforesaid, the said commissioners shall have the right, and it shall be their duty, by a majority vote of all the said commissioners appointed and elected, to designate from among their members one commissioner, who shall be known as "Police and Fire Commissioner," and who shall have under his special charge the enforcement of all police regulations of such city and general supervision over the fire department of such city; and one commissioner to be known as the "Commissioner of Streets and of Public Improvements," who shall have under his special charge the supervision of the streets and alleys of such city, and be charged with the duty of lighting such streets, and

keeping the said streets and alleys in a clean and sanitary condition, and with the enforcement of all rules and regulations necessary to that end, for the preservation of the health of the inhabitants of such city, and who shall also have under his special charge the supervision of all public improvements, and shall see that all contracts therefor are faithfully complied with, and that the conditions of the grant of any franchise or privilege are faithfully complied with and performed; and one commissioner to be known as the "Waterworks and Sewerage Commissioner," who shall have under his special charge the waterworks and sewerage departments of such city, and shall see to the enforcement of all regulations with respect to said departments, and with respect to all the revenues pertaining thereto; and one commissioner who shall be known as the "Commissioner of Finance and Revenue," who shall have under his special charge the enforcement of all laws for the assessment and collection of taxes of every kind and the collection of all revenues belonging to such city, from whatsoever source the same may be derived; and who shall also examine into and keep informed as to the finances of such city.

SEC. 13. That the president of said board of commissioners shall be the executive officer of said city, and shall see that all laws thereof are enforced. The commissioner named as the head of each department shall audit all accounts against it, but before payment they shall be acted upon and approved by at least two members of said board of commissioners. Said board shall require a statement to be published in January, April, July and October of each year, in the official newspaper of said city, showing a full, clear and complete statement of all taxes and other revenues collected and expended, indicating the respective sources from which the moneys are derived, and also indicating the disposition made thereof. All legislative sessions of said board, whether regular or called, shall be open to the public.

SEC. 14. That whenever the president of the board of commissioners shall deem it necessary, in order to enforce the laws of the city, or to avert danger, or protect life or property, in case of a riot, or any outbreak, or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak, or any other danger to said city or the inhabitants thereof, he shall summon into service, as a special police force, all, or as many of the citizens as in his judgment and discretion may be necessary and proper; and such summons may be by proclama-

tion or order, addressed to the citizens generally, or those of any ward of the city or subdivision thereof, or such summons may be by personal notification; such special police, while in service, shall be subject to the orders of the president of the board of commissioners, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city; and any person so summoned, and failing to obey, or appearing and failing to perform any duty that may be required by this act, shall be fined in any sum not exceeding one hundred dollars.

SEC. 15. In case the president of said board is unable to perform the duties of his office by reason of temporary or continued absence or sickness, the said board shall appoint, by ballot, by a majority vote of all the members thereof, one of their number to act in his stead, whose official designation shall be "Acting President of the Board of Commissioners," and the commissioner so appointed shall be invested with all the powers, and shall perform all the duties of the president of said board, during such absence or sickness, and shall receive the salary of the said president during such vacancy; provided, that it shall continue for ten days or longer, and during that time the president shall receive no salary.

SEC. 16. Said board of commissioners shall meet at least once every week in regular meeting, at such time as shall be fixed by said board, at the city hall or other designated place in such city, to consider and take under advisement and act upon, such business as may come before them. A majority of such board as appointed and elected shall constitute a quorum for the transaction of all business, but no action of said commissioners shall be effective unless upon a vote of a majority of such quorum; and no final action shall be taken in any matter concerning the special department of any absent commissioner, unless such business has been made a special order of the day, or such action is taken at a regular meeting of the board. Special meetings may be called by the president of such board, or by any two members thereof, at any time, to consider only such matters as shall be mentioned in the call for said meeting, and written notice thereof shall be given to each member of said board.

SEC. 17. The board of commissioners of such city shall be vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the Constitution and laws of this

State, touching every object, matter and subject within the local government instituted by this act.

Every ordinance imposing any penalty, fine, imprisonment or forfeiture for a violation of its provisions, shall, after the passage thereof, be published in every issue of the official newspaper for ten (10) days successively (excluding Sundays) and proof of such publication by the printer or publisher of such newspaper made before any officer authorized to administer oaths, and filed with the secretary of the board of commissioners or any other competent proof of such publication shall in all courts be conclusive evidence of the legal publication and promulgation of such ordinances.

Ordinances passed by the board of commissioners and requiring publication, shall take effect and be in force from and after the tenth publication thereof, unless it be otherwise expressly provided in such ordinance. Ordinances passed by the board of commissioners, and not requiring publication, shall take effect and be in force from and after their passage, unless it shall therein otherwise expressly be provided.

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SEC. 19. The board of commissioners at their first meeting after their qualification, or as soon thereafter as possible, shall select the following officers, to-wit: A treasurer; an attorney; a recorder; an assessor and collector of taxes; a chief of police; a chief of the fire department; and if deemed necessary by said board also an assistant chief of the fire department; an engineer, who shall also be superintendent of streets; an inspector of buildings; an auditor; a health physician; a harbor master; a sexton; a superintendent of the waterworks; and an engineer of the waterworks; and such other officers and agents as said board of commissioners shall direct. All said officers so elected shall hold their offices for two years, and until the election and qualification of their successors, unless removed by the said board of commissioners, under the authority vested in it by this act. . . .¹

SEC. 21. Said board of commissioners shall have power from time to time to require further and other duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers elected to any office under this act, whose duties are not herein specially mentioned, and to fix their

¹ The succeeding paragraphs give a detailed statement of the duties and qualifications of the officers enumerated in this section.

compensation when not herein fixed. They shall also require bonds to be given to said city by all officers for the faithful performance of their duties, and shall require a new bond from any officer, whenever in the judgment of said board, the existing bond is insufficient, and whenever such new bond is required he shall perform no official act until said bond shall be given and approved as provided in this act. The board of commissioners shall provide for the filling of vacancies in all offices not herein provided for, and in all cases of vacancy the same shall be filled only for the unexpired term.

. . . .

SEC. 24. No salary not fixed or limited in this act shall ever exceed nine hundred dollars (\$900) per annum for any office which said board of commissioners are authorized to create under the provisions hereof, and no officer shall receive fees or commissions except as herein provided.

SEC. 25. The duration of all offices created by this act, or by any ordinance pursuant to this act, passed by the board of commissioners of said city, shall never exceed two years; provided, nevertheless, that the incumbent of any such office shall continue to perform the duties thereof until his successor is duly qualified. In case of vacancy in the board of commissioners of said city such vacancy shall be filled in the manner provided in section ten of this act for the unexpired term, and in case of vacancy in any other office in said city the board of commissioners thereof shall fill such vacancy for the unexpired term.

SEC. 26. The health physician, attorney, engineer, auditor and chiefs of police and fire departments shall attend all regular meetings of the board of commissioners and any special meeting of said board at which their presence may be requested by any member of the board. They shall have the privilege of participating in the discussion of matters relating to their respective departments, but shall have no vote.

. . . .

SEC. 29. Said board of commissioners are hereby authorized to reduce the number of employes in any department of said city, to remove from office in accordance with the provisions of this act any officer or employe appointed by said board, and to make appointments to any office under them authorized by this act, in the manner herein provided.

. . . .

SEC. 32. The board of commissioners shall have power to remove any officer for incompetency, inefficiency, corruption, malconduct, malfeasance or nonfeasance in office, or such other causes as may be prescribed by ordinance, after due notice in writing and opportunity to be heard in his defense, under the rules and regulations hereinafter set forth; provided, however, that by the word "officer" as used in this section, is meant all officers appointed or selected by said board of commissioners, except policemen and firemen.

That whenever charges are preferred in writing and filed with the president of said board by any person against any such officer for any or all of the offenses named or provided for as above, it shall be his duty to have the accused duly served with a copy of such charges, and shall set a day to inquire into the truth of such charges, and shall notify the accused and the other members of said board, and the witnesses for and against the accused, to be present, and the said board of commissioners shall constitute a court to try and determine said case, and they are hereby invested with exclusive jurisdiction to hear and determine said charges, and may continue the investigation from day to day, upon proper showing, to enable the accused or prosecutor to get material evidence before said board. The accused shall have the right to be heard in person or by counsel, and said board shall likewise be represented by counsel, if they desire it. Upon the conclusion of the investigation and argument of the case a vote shall be taken on each charge and specification, and if a majority of all the members of said board vote to sustain either of the charges against the accused, it shall be the duty of the president of said board to enter up the judgment of the court, in which he shall record the vote of each member of said board upon the several charges and specifications, and shall also include in said judgment an order removing the accused from his office and declaring the same vacant, but if the vote is otherwise the accused shall be declared "not guilty," and judgment entered accordingly.

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SEC. 34. That the local government established by this act shall have power:¹

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SEC. 44. The board of commissioners shall have power to

¹The extremely detailed grant of powers, covering eleven closely printed pages of the statute as published, is omitted.

appropriate money to provide for the expenses of said city. In the month of February of each year, or as soon thereafter as practicable, it shall make a careful estimate of the probable revenues of said city for the ensuing year, and shall provide for the disbursement and expenditure of the same and shall at the same time fix the salaries of all officers and employes appointed or elected under the provisions of this act, except those whose compensation is fixed herein, said apportionment to be made as follows, to-wit:

1. It shall reserve and set apart a fund of twenty-five thousand (25,000) dollars, to be used only in case of extraordinary emergencies, which could not have been foreseen before their occurrence, but in no event to be used for the ordinary expenses of said city; and whenever there shall remain unexpended any portion of such reserve fund the same shall constitute a part of such reserve fund for the next ensuing year.

2. It shall then apportion the remainder of the estimated revenue to the several departments of the said city for the general expenses thereof.

Any member of said board of commissioners who shall knowingly vote for, or in any manner aid or promote, the passage or adoption of any ordinance, legislation or other act of said board increasing the appropriation for the expenses of said city beyond the estimate aforesaid, unless the actual revenue shall have exceeded such estimate, and, in such event, beyond such actual revenue, shall thereby vacate his office, and shall be guilty of malfeasance in office, and shall be removed from his office in the manner provided for in this act.

Said estimate or budget shall be prepared in such detail, as to the aggregate sum and the items thereof, as the said board shall deem advisable, and in order to enable the said board to properly prepare such estimate, the heads of all departments shall, at least thirty (30) days before the said estimate is hereby required to be made, send to the said board, in writing, estimates of the amounts needed for the conduct, respectively, of each department of said city for the next ensuing fiscal year. Such estimates shall be verified by the oath or affirmation of the parties making them, and a wilfully false statement made in a material matter, contained in said estimates so made to said board, shall be perjury and punishable as provided by the Penal Code of the State of Texas. The said estimates shall specify in detail the objects thereof and items required for the respective departments, including a statement of

each of the salaries of the officers, employes, deputies and subordinates in each department. It shall be the duty of said board of commissioners, when assembled for the consideration of and appropriation for said budget, to consider and investigate the estimates prepared by said officers, and to hold daily sessions for the consideration and adoption of said budget. After said budget shall have been duly passed and adopted, said board of commissioners shall not have the power to increase the amounts fixed therein, in order to insert any new items therein during such current year, and the said several sums, as therein fixed, shall be and become appropriated after the beginning of the next ensuing fiscal year for the several purposes therein named, to be used by the said board of commissioners and the several departments of said government for the purposes therein named, and for no other purposes or uses whatever. And said board of commissioners shall not have the power, by any ordinance or resolution, to enlarge any item contained in said budget after the same is duly passed. No appropriation provided for in said budget shall be diverted or used under any circumstances for any other purpose than that named therein; and no temporary loan shall be authorized or made to pay any deficiency arising from a failure to realize sufficient income from taxation to meet the amounts provided for in said budget, but the said board of commissioners may borrow money for its use in anticipation of the receipt of taxes levied for any one year, and pledge as security therefor the uncollected taxes for any such year; provided, however, that the money so borrowed for this purpose shall not exceed in any one year the sum of \$100,000. In case of any such deficiency there shall be a pro rata abatement of all appropriations contained in said budget; and in case of any surplus arising in any fiscal year by reason of an excess of income received from the estimated revenues over the expenditures for such year, the said surplus shall be credited to the general fund of said city and shall form part of the general fund for the next ensuing fiscal year. The fiscal year of the city of Galveston shall begin on the first day of March in each year; provided, however, that the first board of commissioners appointed and elected under this act shall, within thirty days after their qualification, make up a budget in compliance with the provisions of this section for the period ending February 28, 1902.

. . . .

SEC. 50. That said commissioners shall not issue any bonds, notes, scrip or other evidence of indebtedness, except as provided in this act, and shall in no event contract for work, material or services in excess of the amount of the estimated revenues for the current year and the funds on hand applicable to such purposes; and all parties contracting with said commissioners for work, material or services shall look alone to the revenues for that year, and to such funds as may be applicable for such purposes at the date of any such contract, and the revenues of no subsequent year shall be appropriated or used to meet any such deficit, and no property, real or personal, owned or held by said city of Galveston for public use, for governmental purposes, or in trust for the public, shall ever be subject to execution or attachment, or seizure under any legal process, for any debt heretofore or hereafter created by said city of Galveston; and all taxes due, or money in the hands of the officers charged with the collection of taxes or any other revenues belonging to said city, shall be exempt from seizure, under attachment, execution, garnishment or any other legal process.

....

SEC. 54. The board of commissioners shall have power and they are hereby authorized to levy for general purposes an annual ad valorem tax on all real, personal and mixed property within the territorial limits of said city, not exempt from taxation by the Constitution and laws of the State of Texas, of and at the rate of not exceeding seventy (70) cents on the hundred (100) dollars cash valuation of said property. The meaning of the term "real property," as used in this act, shall be construed to include lots, lands and all buildings or machinery and structures of every kind erected upon or affixed to the same; and the meaning of the term "personal property," as used in this act, shall be construed to include all household furniture, moneys, goods, capital and chattels, all ships, steamboats and vessels, whether at home or abroad, all stocks of corporations, moneyed or otherwise, and, generally, all property which is not real. That the taxes herein and hereby authorized to be levied shall become due and payable on September first of each year, and shall bear interest at the rate of six per cent per annum from October first following the said levy, until the same are paid, and said taxes are hereby made payable in the currency or coin of the United States.

Said board shall also have the power to annually levy and

collect a poll tax of one (1) dollar of and from every male inhabitant of such city over the age of twenty-one (21) years and under sixty (60) years of age, who shall have resided therein six (6) months previous to the levy of such tax.

Said board of commissioners shall have power to provide by ordinance for the assessing and prompt collecting of all of the taxes aforesaid, and to determine when taxes shall be paid by corporations and when by individual corporators. The license and occupation taxes authorized to be levied by this act shall be collected by the assessor and collector of taxes, and shall be paid to that officer by each and every person and firm before engaging in any trade, profession, business, calling, vocation or occupation subject to said tax, as is provided by the terms of this act.

. . . .

SEC. 67. The city of Galveston shall have the power to issue bonds to the amount of not exceeding \$3,100,000.00 of such denomination as the board of commissioners may determine, payable at such time, not to exceed fifty years, as they may determine and as may be agreed to by the holders of such bonds, bearing interest, payable semi-annually, at a rate to be agreed on by the holders of such bonds and the board of commissioners; said interest rate, however, not to exceed five per cent per annum, but the city of Galveston shall have the right to select by lot as interest coupons on said bonds mature, sufficient of the bonds to retire at not exceeding par, not less than two per cent per annum of the total bonds outstanding of each issue into the sinking fund thereof. These bonds are to be issued for the purpose of refunding such of the outstanding bond issues of the city of Galveston as are hereinafter specified; that is to say, a sufficient number of said bonds so authorized to be issued, shall be in lieu and instead of the outstanding forty-year limited debt bonds of 1881; a sufficient number of said bonds so authorized to be issued, shall be in lieu and instead of the waterworks, street improvement and city hall bonds outstanding; a sufficient number thereof shall be in lieu and instead of the forty-year limited debt bonds of 1891 outstanding; a sufficient number thereof shall be in lieu and instead of the general indebtedness funding bonds of 1895 outstanding; a sufficient number thereof shall be in lieu and instead of the general indebtedness funding bonds approved September 8, 1897, outstanding; a sufficient number thereof shall be in lieu and instead of bonds outstanding, issued for the establishment and maintenance of a

sewerage system in pursuance of an ordinance of the city of Galveston passed December 16, 1897, and the amendment thereof, passed August 21, 1899.¹

SEC. 73. The president of said board of commissioners shall cause to be prepared and make stated financial reports at least as often as once every six (6) months to the Comptroller of the State of Texas, in accordance with forms and methods to be prescribed by said Comptroller. All such reports shall be certified as to their correctness by the auditor of said city. Such reports shall be printed as a part of the public documents of the State and be submitted by the Comptroller of the State to the Legislature at each regular session next succeeding the making of such reports. Such reports shall contain an accurate statement in summarized form, and also in detail, of the financial receipts of the city from all sources, and of the expenditures of the city for all purposes, together with a statement in detail of the debt of said city at the date of said report, and of the purposes for which said debt has been incurred, as well as such other information as may be required by said Comptroller of the State. Said Comptroller of the State shall have power, and it is also made his duty, by himself or by some competent person or persons appointed by him, to examine into the affairs of the financial department of said city; on every such examination, inquiry shall be made as to the financial condition and resources of the city, and whether the requirements of the Constitution and laws have been complied with, and into the methods and accuracy of the accounts of the said city, and as to such other matters as the said Comptroller may prescribe. The Comptroller of the State and every such examiner appointed by him shall have power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person for the purpose of any such examination and the production of books and papers. A report of each such examination shall be made and shall be a matter of public record in the office of said Comptroller.

. . . .

Approved April 18, 1901.

Takes effect 90 days after adjournment.

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¹Provision is made for specific ad valorem taxes to provide sinking-funds for the retirement of portions of Galveston's bonded indebtedness. Section 69 authorizes the issuance of bonds for \$1,500,000, the proceeds to be used for raising the grade of certain areas of the city.

68. The Iowa Commission Plan Statutes of 1907.

One of the early imitators of Galveston was the city of Des Moines, Iowa. In 1907 its citizens secured the adoption by the Iowa legislature of an act permitting cities to adopt the commission form of government; and the terms of this act came to be known as the Des Moines plan of city government. It differed from the Galveston plan in some particulars, especially in adding to the commission form the initiative, referendum, recall, and non-partisan primary. In the subsequent progress of the commission form of government it was the Des Moines plan which oftenest became the model for the detailed charter provisions of other cities.

SOURCE—*Acts and Resolutions of the General Assembly of the State of Iowa, 1907* (Des Moines, 1907), Chap. 48.

AN ACT to provide for the government of certain cities, and the adoption thereof by special election. "Additional to title five (V) of the code."

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Cities affected. That any city of the first class, or with special charter, now or hereafter having a population of twenty-five thousand or over, as shown by the last preceding state census, may become organized as a city under the provisions of this act by proceeding as hereinafter provided.

SEC. 2. Petition—question submitted—result certified—election of officers. Upon petition of electors equal in number to twenty-five per centum of the votes cast for all candidates for mayor at the last preceding city election of any such city, the mayor shall by proclamation, submit the question of organizing as a city under this act at a special election to be held at a time specified therein, and within two months after said petition is filed. If said plan is not adopted at the special election called, the question of adopting said plan shall not be re-submitted to the voters of said city for adoption, within two years thereafter and then the question to adopt shall be re-submitted upon the presentation of a petition signed by electors equal in number to twenty-

five per centum of the votes cast for all candidates for mayor at the last preceding general city election. At such election, the proposition to be submitted shall be, "Shall the proposition to organize the city of (name the city), under chapter (naming the chapter containing this act) of the acts of the 32nd General Assembly, be adopted?" and the election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. If the majority of the votes cast shall be in favor thereof, the city shall thereupon proceed to the election of a mayor and four (4) councilmen, as hereinafter provided. Immediately after such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county auditor, each a certificate stating that such proposition was adopted. At the next regular city election after the adoption of such proposition, there shall be elected a mayor and four (4) councilmen. In the event, however, that the next regular city election does not occur within one year after such special election, the mayor shall, within ten days after such special election, by proclamation, call a special election for the election of a mayor and four councilmen, sixty days' notice thereof being given in such call; such election in either case to be conducted as hereinafter provided.

SEC. 3. Statutes applicable—existing ordinances, resolutions, etc. All laws governing cities of the first class and not inconsistent with the provisions of this act, and sections 955, 956, 959, 964, 989, 1000, 1023, and 1053 of the code now applicable to special charter cities and not inconsistent with the provisions of this act, shall apply to and govern cities organized under this act. All by-laws, ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this act. The territorial limits of such city shall remain the same as under its former organization and all rights and property of every description which were vested in any such city under its former organization, shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided for in this act.

SEC. 4. Elective officers—vacancies—terms of office. In every such city there shall be elected at the regular biennial mu-

nicipal election, a mayor and four councilmen. If any vacancy occurs in any such office the remaining members of said council shall appoint a person to fill such vacancy during the balance of the unexpired term. Said officers shall be nominated and elected at large. Said officers shall qualify and their terms of office shall begin on the first Monday after their election. The terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the terms of office of the mayor and councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all other appointive officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

. . . .¹

SEC. 6. Council—quorum—mayor to preside. Every such city shall be governed by a council, consisting of the mayor and four councilmen, chosen as provided in this act, each of whom shall have the right to vote on all questions coming before the council. Three members of the council shall constitute a quorum, and the affirmative vote of three members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure unless a greater number is provided for in this act. Upon every vote the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing and read before the vote is taken thereon. The mayor shall preside at all meetings of the council; he shall have no power to veto any measure, but every resolution or ordinance passed by the council must be signed by the mayor, or by two councilmen, and be recorded, before the same shall be in force.

SEC. 7. Council—powers and duties—departments. The council shall have and possess and the council and its members shall exercise all executive, legislative and judicial powers and duties now had, possessed and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of water-works trustees, board of library trustees, solicitor, assessor, treasurer, auditor, city engineer, and other executive and administrative officers in cities of the first class and cities acting under special charter. The executive and administrative powers, authority and duties in such cities shall be distributed into and among five departments, as follows:

¹ Section 5, dealing with the nomination and election of municipal officials, will be found as § 80.

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property.

The council shall determine the powers and duties to be performed by, and assign them to the appropriate department; shall prescribe the powers and duties of officers and employes; may assign particular officers and employes to one or more of the departments; may require an officer or employe to perform duties in two or more departments; and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

SEC. 8. Department superintendents—officers and assistants. The mayor shall be superintendent of the department of public affairs, and the council shall at the first regular meeting after election of its members designate by majority vote one councilman to be superintendent of the department of accounts and finances; one to be superintendent of the department of public safety; one to be superintendent of the department of streets and public improvements; and one to be superintendent of the department of parks and public property; but such designation shall be changed whenever it appears that the public service would be benefited thereby. The council shall, at said first meeting, or as soon as practicable thereafter, elect by majority vote the following officers: A city clerk, solicitor, assessor, treasurer, auditor, civil engineer, city physician, marshal, chief of fire department, market master, street commissioner, three library trustees, and such other officers and assistants as shall be provided for by ordinance and necessary to the proper and efficient conduct of the affairs of the city; and shall appoint a police judge in those cities not having a superior court. Any officer or assistant elected or appointed by the council may be removed from office at any time by vote of a majority of the members of the council, except as otherwise provided for in this act.

SEC. 9. Power to create and discontinue offices. The council shall have power from time to time to create, fill and discontinue offices and employments other than herein prescribed, according to their judgment of the needs of the city; and may by majority vote of all the members remove any such officer or employe, except as otherwise provided for in this act; and may by resolution or

otherwise prescribe, limit or change the compensation of such officers or employes.

SEC. 10. Office in city hall—salaries. The mayor and council shall have an office at the city hall, and their total compensation shall be as follows: In cities having by the last preceding state or national census from 25,000 to 40,000 people, the annual salary of the mayor shall be \$2,500, and of each councilman \$1,800. In cities having by such census from 40,000 to 60,000 people, the mayor's annual salary shall be \$3,000, and that of each councilman \$2,500; and in cities having by such census over 60,000 population, the mayor's annual salary shall be \$3,500, and that of each councilman \$3,000. Such salaries shall be payable in equal monthly installments. Any increase in salary occasioned under the provisions of this scale by increase in population in any city shall commence with the month next after the official publication of the census showing such increase therein. Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance provide, payable in equal monthly installments. The salary or compensation of all other employes of such city shall be fixed by the council and shall be payable monthly or at such shorter periods as the council shall determine.

SEC. 11. Meetings—president of council—vice-president. Regular meetings of the council shall be held on the first Monday after the election of councilmen, and thereafter at least once each month. The council shall provide by ordinance for the time of holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public. The mayor shall be president of the council and preside at its meetings, and shall supervise all departments and report to the council for its action all matters requiring attention in either. The superintendent of the department of accounts and finances shall be vice-president of the council, and in case of vacancy in the office of mayor, or the absence or inability of the mayor, shall perform the duties of mayor.

SEC. 12. Ordinances and resolutions—franchises. Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any

purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in any such city shall be granted, renewed or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas or water-works, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities within said city, must be authorized or approved by a majority of the electors voting thereon at a general or special election as provided in section 776 of the code.

SEC. 13. Officers and employes—what prohibited. No officer or employe elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for the city; and no such officer or employe shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm or corporation operating interurban railway, street railway, gas works, water-works, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employe shall accept or receive, directly or indirectly, from any person, firm or corporation operating within the territorial limits of said city, any interurban railway, street railway, gas works, water works, electric light or power plant, heating plant, telegraph line or telephone exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket or free service, or accept or receive, directly or indirectly, from any such person, firm or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor, and every such contract or agreement shall be void. Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employe of such city who, by solicitation or otherwise, shall exert his influence directly or indirectly to influence other officers or employes of such city to adopt his political views or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person

for election purposes, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding three hundred dollars (\$300) or by imprisonment in the county jail not exceeding thirty (30) days.

SEC. 14. Civil service commissioners—duties—powers of council. Immediately after organizing, the council shall by ordinance appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year after his appointment, one until the first Monday in April of the fourth year after his appointment, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for six years, who shall take the place of the commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Iowa, and residents of the city for more than three years next preceding their appointment. The council may remove any of said commissioners during their term of office for cause, four councilmen voting in favor of such removal, and shall fill any vacancy that may occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission may hold its meetings. They shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

(a) *Oath of office.* Before entering upon the duties of their office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Iowa, and to obey the laws, and to aim to secure and maintain an honest and efficient force, free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

(b) *Examinations—results certified.* Said commission shall, on the first Monday of April and October of each year, or oftener if it shall be deemed necessary, under such rules and regulations as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examinations shall be practical and shall fairly test

the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Said commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who, according to its records, have the highest standing for the positions they seek to fill as a result of such examination, and all vacancies which occur, that come under the civil service, prior to the date of the next regular examination, shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed thirty days.

(c) *Removal and discharges—appeal.* All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules and regulations as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of orders, but shall, within twenty-four hours thereafter, report such suspension or discharge, and the reason therefor, to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension according to the facts. Such employe (or the officer discharging or suspending him) may, within five days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

(d) *Witnesses—annual report—rules and regulations.* The council shall have the power to enforce the attendance of witnesses, the production of books and papers, and power to administer oaths in the same manner and with like effect, and under the same penalties, as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Iowa. Said commissioners shall make annual report to the council, and it may require a special report from said commission at any time; and said council may prescribe such rules and regulations for the proper conduct of the business of the said commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employes, certification of records to the auditor, and restrictions on payment to persons improperly employed.

(e) *Penalties.* The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this act relating to the civil service commission.

(f) *Officers and employes affected.* The provisions of this section shall apply to all appointive officers and employes of such city, except those especially named in section 8 of this act, commissioners of any kind (laborers whose occupation requires no special skill or fitness), election officials, and mayor's secretary and assistant solicitor, where such officers are appointed; provided, however, that existing employes heretofore appointed, or employed after competitive examination, or for long service under the provisions of chapter 31, acts of the 29th General Assembly, and subsequent amendments thereto, shall retain their positions without further examination unless removed for cause. All officers and employes in any such city shall be elected or appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith or party affiliations. It shall be unlawful for any candidate for office, or any officer in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value, for the purpose of influencing or obtaining the political support, aid or vote of any person or persons. Every elective officer in any such city shall, within thirty days after qualifying, file with the city clerk, and publish at least once in a daily newspaper of general circulation, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed. Any violation of the provisions of this section shall be a misdemeanor and be a ground for removal from office.

SEC. 15. Monthly itemized statement—annual examination. The council shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspapers of the city, and to persons who shall apply therefor at the office of the city clerk. At the end of each year the council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditures.

SEC. 16. Appropriations. If, at the beginning of the term of office of the first council elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal or change said appropriations and to make additional appropriations.

SEC. 17. Terms defined. In the construction of this act the following rules shall be observed, unless such construction would be inconsistent with the manifest intent, or repugnant to the context of the statute:

1. The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this act.

2. When an office or officer is named in any law referred to in this act, it shall, when applied to cities under this act, be construed to mean the office or officer having the same functions or duties under the provisions of this act, or under ordinances passed under authority thereof.

3. The word "franchise" shall include every special privilege in the streets, highways and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right.

4. The word "electors" shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

...¹

SEC. 21. Abandonment of commission plan of government—procedure. Any city which shall have operated for more than six years under the provisions of this act may abandon such organization hereunder, and accept the provisions of the general law of the state then applicable to cities of its population, or if now organized under special charter may resume said special charter, by proceeding as follows: Upon the petition of not less than twenty-five per centum of the electors of such city a special election shall be called, at which the following proposition only shall be submitted:

"Shall the city of (name of city) abandon its organization under chapter . . . of the acts of the Thirty-second General Assembly, and become a city under the general law governing cities of like population or if now organized under special charter shall resume said special charter?"

¹Sections 18 to 20, dealing with the recall, initiative and referendum, are adapted from the Los Angeles provisions, to be found as § 93.

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state; but such change shall not in any manner or degree affect the property, rights or liabilities of any nature of such city, but shall merely extend to such change in its form of government. The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided by section 18 of this act, in so far as the provisions thereof are applicable.

SEC. 22. **Petitions.** Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city and the number of signers at the time the affidavit was made.

SEC. 23. **In effect.** This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Register & Leader and Des Moines Capitol, newspapers published in Des Moines, Iowa.

Approved March 29, A. D. 1907.

69. Charter of Fort Worth, Texas, 1909.

An interesting variation in the commission plan was the provision of the Fort Worth charter of 1909 that, for election purposes, commissioners should be designated by number. This left the commission free to assign at its discretion the various departments to the commissioners elected, but forced candidates to determine in advance whether they would run for commissioner Number 1 or commissioner Number 2, and so on. This device has been imitated in Oakland, California, and a few other cities.

SOURCE—*Local and Special Laws of the State of Texas*, 1909, Chap. 31, 231-232.

CHAPTER II.

. . . .

SEC. 3. On the first Tuesday after the first Monday in April, 1909, and at each successive interval of two years thereafter, there shall be elected at large by the qualified voters of the City of Fort Worth, at a general election to be held for that purpose, a mayor and five commissioners, subject to the provisions of Section 1, Chapter 2, a corporation counsel and an assessor and collector of taxes. Said officers shall hold office for a period of two years and until their successors shall have been elected and qualified and at the same time, on the first Tuesday after the first Monday in April, 1909, there shall also be elected at large by the qualified voters of the City of Fort Worth, at a general election to be held for that purpose, a corporation counsel, who shall hold office for a period of two years, and until his successor shall have been elected and qualified. At the expiration of the term of office of said corporation counsel, and in the event of the death, disqualification, resignation or removal of such officer, pending such term, the power to elect and select said officer shall reside, as in the case of all other appointive officers of the City of Fort Worth, in the said board of commissioners. The board of commissioners of said city shall order the general election and shall determine the places in said city for holding the same, and the mayor of said city shall make proclamation thereof, and otherwise said election and the manner of holding same shall be governed by the laws of the State of Texas governing general elections so far as same may be applicable thereto; and in the event there should be any failure on the part of the general laws of the State to provide for some feature of said city election, then the board of commissioners of said City of Fort Worth shall have the power to provide for such deficiency. The five commissioners to be elected as provided for in this act shall be voted for and elected separately and designated on the official ballot by numbering the same "1," "2," "3," "4" and "5." Each person desiring to become candidate for commissioner as aforesaid shall designate the number of the class to which he desires to become a candidate, and his name shall be printed on the official ballot beneath the number so selected, and each voter shall vote for only one candidate in each such class.

. . . .

70. Amendments to the Iowa Commission Plan Statute, 1921.

Des Moines' experience with electing five commissioners on a general ticket every two years and then allowing the commission to assign its members to various departments was not a happy one. It was found, for example, that the people might elect two or three commissioners very suitable to have charge of the Department of Parks and Public Property and no one competent to be head of the Department of Accounts and Finances, or that a commissioner elected by the people with the expectation that he would become head of the Department of Streets and Public Improvements would be assigned to Public Safety. As a result, the law was amended in 1921 to provide for the election of commissioners to specific commissionerships. It is to be noted also that the act as amended provided for the merging of departments in cities of from 2,000 to 25,000 inhabitants.

SOURCE—*Acts and Joint Resolutions passed at the Regular Session of the Thirty-Ninth General Assembly of the State of Iowa, 1921* (Des Moines, 1921), Chap. 109, as amended by *Acts of 1923*, Chap. 135.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Primary election—affidavit—petition—notice—ballots—combining offices—challenges—count and return—general canvass—notice of result—who nominated—electors—time, place and method of election. That section ten hundred and fifty-six-a21 (1056-a21) of the supplement to the code, 1913, be and the same is hereby amended by striking from said section all that part of said section which follows the colon at the end of line sixteen (16) and inserting in lieu thereof the following:

State of Iowa, }
 _____ County } ss.

I, _____ being duly sworn, say that I reside at _____ street, city of _____, county of _____, state of Iowa; that I am a qualified voter therein; that I am a candidate for nomination to the office of (here designate office to which you aspire) to be

voted upon at the primary election to be held on _____ Monday of _____19— and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) _____

Subscribed and sworn to (or affirmed) before me by _____ on this _____ day of _____19—

(Signed) _____

and shall, at the same time, file therewith a petition of at least one hundred (100) qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to the qualification and residence, with street number of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

PETITION ACCOMPANYING NOMINATING STATEMENT

The undersigned, duly qualified electors, of the city of _____ and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination for (here designate the office to which he aspires) at the primary election to be held in such city on the _____ Monday of _____19—.

We further state that we know him to be a qualified elector of said city and a man of good moral character and qualified in our judgment for the duties of such office.

Name of qualified electors	Number	Street
_____	_____	_____
_____	_____	_____

Immediately upon the expiration of the time of filing the statements and petitions for candidacies, the said city clerk shall cause to be published for three successive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballot, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, as is provided in section two (2) of this act, shall be placed, with a square at the left of each name, and immediately below the words, "vote for one."

Following these names, likewise as is provided in section (2) of this act, shall appear the names of all the candidates, for the office of superintendent of "accounts and finances," or superintendent of "accounts and finances and parks and public property" as the case may be, with a square to the left of each name and immediately below the words, "vote for one."

Following these names likewise as is provided in section two (2) of this act, shall appear the names of all candidates for the office of "superintendent of public safety," or "superintendent of public safety and streets and public improvements" as the case may be, with a square to the left of each name and immediately below the words "vote for one."

Following these names likewise as is provided in section two (2) of this act, shall appear the names of all the candidates for the office of "superintendent of streets and public improvements" with a square to the left of each name and immediately below the words, "vote for one."

Following these names, likewise as is provided in section (2) of this act, shall appear the names of all the candidates for the office of "superintendent of parks and public property" with a square to the left of each name and immediately below the words, "vote for one."

In cities having a population of two thousand (2,000) and not over twenty-five thousand (25,000) the "departments of accounts and finances" and "parks and public property" shall be presided over by one and the same person; and the "departments of public safety" and "streets and public improvements" shall be presided over by one and the same person.¹ The ballots shall be printed upon plain, substantial white paper, and shall be headed:

CANDIDATES FOR NOMINATION FOR MAYOR AND COUNCIL OF (Here Name of City) AT THE PRIMARY ELECTION

But shall have no party designation or mark whatever, except that of the office or particular department to which the candidate aspires as shown by his statement filed with the city clerk and by the petition of electors filed also with the city clerk.

The ballots in all cities having a population of twenty-five thousand (25,000) or over shall be in substantially the following

¹ Chapter 135, *Acts of 1923*, provides that the departments to be combined shall be "accounts and finances" and "public safety"; and, "parks and public property" and "streets and public improvements."

form: (place a cross in the square preceding the name of the person you favor for each respective position).

OFFICIAL PRIMARY BALLOT

CANDIDATES FOR NOMINATION FOR MAYOR AND
COUNCILMEN OF (Name of City) AT THE PRIMARY
ELECTION

FOR MAYOR

(Vote for one)

☐ Name of candidate

☐ Name of candidate

FOR SUPERINTENDENT OF ACCOUNTS AND FINANCES

(Vote for one)

☐ Name of candidate

☐ Name of candidate

FOR SUPERINTENDENT OF PUBLIC SAFETY

(Vote for one)

☐ Name of candidate

☐ Name of candidate

FOR SUPERINTENDENT OF STREETS AND PUBLIC IM-
PROVEMENTS

(Vote for one)

☐ Name of candidate

☐ Name of candidate

FOR SUPERINTENDENT OF PARKS AND PUBLIC PROP-
ERTY

(Vote for one)

☐ Name of candidate

☐ Name of candidate

OFFICIAL BALLOT ATTEST

_____(Signature)_____

City Clerk

The ballot in all cities having a population of two thousand (2,000) and less than twenty-five thousand (25,000) shall be in substantially the following form:

OFFICIAL PRIMARY BALLOT

CANDIDATES FOR NOMINATION FOR MAYOR AND COUN-
CILMEN OF (Name of City) AT THE PRIMARY
ELECTION

FOR MAYOR

(Vote for one)

☐ Name of candidate

☐ Name of candidate

FOR SUPERINTENDENT OF ACCOUNTS AND FINANCES
AND PARKS AND PUBLIC PROPERTY

(Vote for one)

☐ Name of candidate

☐ Name of candidate

FOR SUPERINTENDENT OF PUBLIC SAFETY AND
STREETS AND PUBLIC IMPROVEMENTS

(Vote for one)

☐ Name of candidate

☐ Name of candidate

OFFICIAL BALLOT ATTEST

_____(Signature)_____

City Clerk

. . . .

PART VIII

THE MANAGER PLAN

71. Staunton, Virginia, General Manager Ordinance, 1908.

The first appearance of the manager plan was in Staunton, Virginia, in 1908. Staunton had desired to adopt the commission plan of government, but under the Virginia constitution it was at that time impossible to do so. The city council, however, possessed authority to create additional offices and to prescribe their duties. It adopted the ordinance which follows.

SOURCE—Staunton, Va., *Records of the City Council*, Vol. 11, 346.

GENERAL MANAGER.

SEC. 461. Appointment; term; clerk; duties; reports; bond.

There shall be appointed by the two branches of the council in joint session, annually, at the regular election of the city officers in July of each year, an officer to be known and designated as "General Manager." He shall hold office for the term of one year and until his successor is duly appointed and qualified, unless sooner removed by the council at its pleasure. He shall be paid such compensation as the council may determine and shall have right to employ one clerk at such salary as the council may determine. He shall devote his entire time to the duties of his office, and shall have entire charge and control of all the executive work of the city in its various departments, and have entire charge and control of the heads of departments and employees of the city. He shall make all contracts for labor and supplies and in general perform all the administrative and executive work now performed by the several standing committees of the council, except the finance, ordinance, school and auditing committees. He shall discharge such other duties as shall from time to time be required of him by the council. He shall make out and have printed quarterly reports of all the departments of the city with which he shall be connected.

The general manager, before entering upon the duties of his office, shall execute a bond before the clerk of the council in the penalty of \$5,000.00, with good and sufficient security, conditioned for the faithful performance of the duties of his office.

72. The Lockport Plan, 1911.

The Board of Trade of Lockport, New York, endeavoring to secure for that city an improved form of government, was led to draft a charter which placed the executive power in a manager appointed by and responsible to the council. This charter was introduced in the New York legislature of 1911 as "an act enabling cities of the third class by popular vote to redistribute their corporate functions." The bill died in the legislature. The Lockport Plan had, however, been given wide publicity, largely through the efforts of the National Short Ballot Association, and it became a model for future manager charters.

SOURCE—*Bills of the Senate of the State of New York*, printed during the 134th Session of the Legislature (Albany, 1911), II, No. 434. The text of the plan was also published by the Lockport Board of Trade. Extracts are printed in C. A. Beard, *Loose Leaf Digest of Short Ballot Charters* (New York, 1911).

A N A C T

ENABLING CITIES OF THE THIRD CLASS BY POPULAR VOTE TO REDISTRIBUTE THEIR CORPORATE FUNCTIONS.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

ARTICLE I.

General Provisions.

Section 1. **Short title.** This act shall be known as "The Optional Third Class Cities Law." . . .

§ 4. **Application of this act.** The provisions of this act shall apply to all cities of the third class which shall adopt the same, as a whole, and shall file such notices of the adoption of the same as are herein provided, with the county clerk of the county in which the city is situated.

ARTICLE II.

Adoption of this Act.

. . . .¹

ARTICLE III.

Reorganization Under this Act.

. . . .

§ 13. **Redistribution of corporate functions.** Within three months after having assumed office the city council shall cause the functions of the city government to be distributed among as many different departments, according to any reasonable classification, as they shall deem advisable. Subject to the restrictions upon such distribution imposed by the provisions of this act, new offices and boards of officers may be established at any time, by ordinance, or old offices or boards consolidated or abolished.

§ 14. **Restrictions on such redistribution.** But the city council shall not create, consolidate or abolish courts of law, or abridge or enlarge their jurisdiction, or abolish any of the offices the principal function of which is to execute the processes of courts of law. Nor shall anything in this article be construed so as to conflict with article ten, relating to the department of education, or to abolish the civil service commission, in such cities as one is now established by law, or to change its structure, or abrogate any of its powers or duties or to consolidate the office of assessor with that of any other officer. Nor shall the city council delegate any of its own powers of legislation or general regulation except as hereinafter specified. . . .

§ 17. **Organization within departments.** The city council shall, in distributing the functions of the city government, designate some officer or board within each department to be known and to act as the head thereof. All officers and employees shall be attached to some department and shall be responsible to its head. But employees may be required to perform duties under more than one department, and officers may be required to perform such general and special duties in addition to their departmental work as may be required of them by the city council or the city manager. . . .

¹ The adoption of this act by the city is to be submitted to popular vote, if requested by a petition signed by one-eighth of the legal voters.

ARTICLE IV.

Elections and Recall of Officers.

. . . .¹

§ 24. **Nomination by deposit.** (1) In lieu of a petition of nomination a deposit of fifty dollars in legal tender may be made by any candidate for the office of alderman and his name shall be entered upon the official ballot in all respects as if a petition had been filed and accepted. The city clerk shall give to such candidate a receipt for such deposit, which shall, in every case, be sufficient evidence of the payment therein mentioned.

(2) The sum so deposited by any candidate shall be returned to him in the event of his obtaining a number of votes at least equal to fifteen per centum of the number of votes cast for any candidate elected. Otherwise such sum shall belong to the city for its public uses.

(3) The sum so deposited shall, in the case of the death of any candidate after being nominated and before the election be returned to the legal representatives of such candidate.

ARTICLE V.

The City Council.

§ 25. **Legislative power vested.** The legislative and general regulative powers of the city shall be vested in a city council which shall consist of five aldermen elected at large. There shall be no other elective officers of the city.

§ 26. **Term of aldermen.** The term of aldermen shall be four years, subject to recall by the voters of the city, as hereinbefore provided by this act.

§ 27. **Resignations.** Any alderman may resign at any time and his office shall be filled by the remaining members.

§ 28. **Qualifications.** The qualifications of aldermen shall be the highest non-professional or non-technical qualifications specified for any officer under the charter.

§ 29. **Compensation.** Aldermen shall receive such salary, if any, as is granted by the charter. But the city council may de-

¹ Sections 19-22 follow, in substance, the provisions of Article III, Sections 4-6, of the Charter of Berkeley, Calif., 1909, which will be found as § 81. Section 23, providing for the recall of aldermen, follows, in a general way, the recall section of the Los Angeles charter, to be found as § 93.

termine upon an amount which they may consider a just and adequate compensation for their public services and may submit a proposition to the qualified electors of the city, at any regular or special election, to fix their compensation in that amount. Such proposition shall be submitted in the following form: "Shall the compensation of aldermen be fixed at (insert amount)?" If a majority of the electors voting shall vote affirmatively on such proposition, the salaries shall be fixed accordingly, to take effect on the first day of the calendar month next succeeding the official canvass of the vote and shall not be refixed except by the same process.

§ 30. **Eligibility for other offices.** No alderman shall be eligible for any other municipal office during the term for which he shall have been elected, except in such ex-officio capacities as are provided for in this act, for which he shall receive no additional compensation. The acceptance of any other public office shall operate to vacate his membership in the city council.

§ 31. **Meetings of city council.** (1) The city council shall meet for special purposes at all such times as are fixed therefor by the charter.

(2) An ordinance shall be passed, before this act shall be declared to be in full operation, providing a schedule of regular sessions to occur not less frequently than is fixed by the charter, and for the special sessions at which the city council shall act in the capacity of board of estimate and apportionment and as the ex-officio governing board of any corporate bodies within the municipality as hereinafter provided.

(3) Any two members may call a meeting.

(4) All meetings shall be public.

(5) Any citizen may have access to the minutes upon application to the city clerk.

(6) **Citizen's motion.** Any citizen may appear before the city council at any of its regular meetings and may present a printed motion. Said motion shall be acted upon by the city council, in the regular course of business, within fifteen days.

§ 32. **Quorum.** Three members shall constitute a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members.

§ 33. **Passage of measures.** Three votes shall be required to pass any measure involving the expenditure of money, confirming appointments or removals, granting a franchise, or authorizing a

bond issue. A simple majority shall suffice for the passage of any other measure. The signature of the mayor shall not be required in any case.

§ 34. **No member excused.** No member shall be excused from voting except upon matters involving the consideration of his own official conduct. In all other cases a failure to vote shall be entered on the minutes as a negative vote.

§ 35. **Mayor to preside.** The mayor shall preside at all sessions and shall have two votes in case of a tie. . . .¹

§ 37. **Powers and duties of city council; enumerated.** The city council shall have power and it shall be their duty, subject to the positive grants of power to other bodies contained in this act:

(1) To exercise all the corporate functions of the city in relation to finance, including the power to borrow money, issue bonds, levy taxes and assessments and make appropriations.

(2) To buy, sell, lease, rent or condemn real estate and buildings. But the power of the tax-collecting officer to take any lawful action for the collection of delinquent taxes and assessments shall not be abrogated or abridged.

(3) To exercise the corporate powers in relation to contracts.

(4) To exercise such control over public utility plants, including the power to fix rates at which public utilities shall be furnished to consumers, as is vested in the city by the charter, or by the general laws of the state.

(5) To receive gifts of money, real estate and buildings, except those made for the uses of the board of education and to control the disposition of the same.

(6) To grant and revoke licenses for the conduct of lawful forms of business and to pass ordinances governing their granting and revocation.

(7) To make all such readjustments and redistribution of the functions of administrative departments as are provided for in article eight.

(8) To confirm and reject appointments and removals as provided for in article nine.

(9) To fix the compensation of appointive officers, boards

¹All functions of the common council and other officials and boards are transferred to the city council, except as otherwise provided in this bill. It is provided, however, that "the powers exercised shall not be executive or administrative except as hereafter specified."

and employees. But the salaries of officers and boards appointed for a fixed period shall not be lowered during their term. Nor shall any fees, fixed by act of the legislature, be altered.

§ 38. **Control over administrative departments.** (1) The city council shall have power and it shall be their duty to issue general and special orders, by resolution, to the city manager, giving him authority to carry out, in accordance with law, the administrative powers and duties conferred and imposed upon the city.

(2) They shall require the city manager to present, once a year, a complete report, financial and otherwise, of the activities of the several departments of the city government, and special reports at any time.

(3) In cities where the charter provides for a board of estimate and apportionment, that body shall consist of the city council meeting in special session, public notice whereof shall have been given as provided by section thirty-one of this article. At such special session the city council may compel the attendance of all heads of administrative departments, and shall exercise the functions designated to the board of estimate and apportionment by the charter.

(4) The city council may provide for a board of audit, or a special auditor, to be directly subject to their control, and independent of the city manager. Such board or officer shall have access to all vouchers and other public records within the several administrative departments at all times and shall have such powers consistent with the law as the city council may confer. But all claims arising from injury to person or property shall be audited and disposed of by the city council.

(5) The city council shall have power to validate any lawful act performed by any administrative officer of the city without its previous authority.

(6) In cities which are independent highway districts the city council shall be ex-officio commissioners of highways.

....
§ 40. **Effect of enumeration.** The enumeration of any power or powers herein granted the city council shall not be construed so as to exclude any others which may be granted by any other law applicable to the city and not inconsistent with this act. The exercise of powers by the city council shall be subject to the provisions of article eleven.

ARTICLE VI.

The Mayor.

§ 41. **How chosen.** The mayor shall be that member of the city council who, at regular election of officers, shall have received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining three members elected to the city council. In the event of the mayor's resignation or recall, the remaining members of the city council shall choose his successor for the unexpired term, from their own number.

§ 42. **General powers and duties.** The powers and duties of the mayor shall be such as are conferred upon him by this act, together with such others as are conferred by the city council in pursuance of the provisions of this act, and no others.

§ 43. **President of city council.** He shall be president of the city council and shall exercise all the powers conferred and perform all the duties imposed upon the presiding officer of the common council by the charter which are not inconsistent with this act. He shall appoint all standing and special committees of the city council. He shall be recognized as the official head of the city by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

§ 44. **Police and military powers.** His power to take command of the police and to govern the city by proclamation during times of great public danger shall not be abridged or abrogated.

§ 45. **Designation to judicial vacancies.** During the disability of any municipal judge or justice of the peace the mayor shall designate some properly qualified person to act during such disability.

§ 46. **Magisterial powers.** He shall have power to administer oaths and take affidavits.

§ 47. **Commissioner of charities in certain cities.** In cities where the mayor is authorized by charter to sit with the supervisors as a commissioner of charities, he shall continue so to act.

§ 48. **Removal by governor.** The power of the governor to remove the mayor shall not be abridged.

§ 49. **No judicial powers; mayor's courts abolished.** The mayor shall have no judicial power. The mayor's court of special

sessions and all other mayor's courts are hereby abolished. The jurisdiction of the same shall be conferred by the city council upon some other municipal court.

§ 50. **Non-enumerated functions.** Such functions, not enumerated in this act, as are conferred upon the mayor of the city by charter or by the general laws of the state shall be exercised by the city manager unless some other provision shall be made by the city council.

§ 51. **Salary.** The salary of the mayor shall be twice the salary, if any, received by any other member of the city council.

§ 52. **Acting mayor.** During the disability of the mayor, the functions of his office shall devolve upon some member of the city council designated by that body, who shall receive during such incumbency a pro rata of the excess over the alderman's salary which is allowed to the mayor under this act.

ARTICLE VII.

The City Manager.

§ 53. **Administrative head of government.** There shall be chosen by the city council an officer to be known as the city manager, who shall be the administrative head of the city government.

§ 54. **Official oath and bond.** Before entering upon the duties of his office the city manager shall take the official oath required by law and shall execute a bond in favor of the city for the faithful performance of his duties in such sum as shall be determined upon by the city council.

§ 55. **Term.** The term of the city manager shall be at the pleasure of the city council.

§ 56. **Not to be interested.** The city manager shall not be personally interested in any contracts to which the city is a party, for supplying the city with materials of any kind.

§ 57. **Duties; general.** It shall be the duty of the city manager to see that within the city the laws of this state and the ordinances, resolutions and by-laws of the city council shall be faithfully executed. In addition to such functions as are enumerated in this act he shall exercise all other powers and perform all other duties conferred and imposed upon mayors of cities except other designation shall be made by this act or by act of the city council.

§ 58. **Recommendations and reports.** It shall be his duty to attend all meetings of, and to recommend to, the city council, from

time to time, such measures as he shall deem necessary or expedient for it to adopt. He shall prepare business, and draw up resolutions and ordinances for adoption by the city council, and furnish them with any necessary information respecting any of the departments under his control.

He shall, at such times as the city council shall so require, present reports from the several departments, and shall draw up an annual report which shall consolidate the special reports of the several departments. He shall be a member of the board of estimate and apportionment and shall present to that body, annually, an itemized estimate of the financial needs of the several departments for the ensuing year.

§ 59. **Appointments.** He shall appoint persons to fill all offices for which no other mode of appointment is provided. And no such appointment to or removal from such office shall be made without his consent.

§ 60. **Relation to department heads.** He shall transmit to the heads of the several departments written notice of all acts of the city council relating to the duties of their departments, and he shall make designations of officers to perform duties ordered to be performed by the city council.

§ 61. **Signs certain documents.** He shall sign such contracts, licenses and other public documents, on behalf of the city, as the city council may authorize and require.

§ 62. **Access to public records.** He shall have access at all times to the books, vouchers and papers of any officer or employee of the city and shall have power to examine, under oath, any person connected therewith. It shall be his duty, either in person or by the aid of a competent expert, to know the manner in which the accounts of the city and the various boards are kept.

§ 63. **Signs warrants of arrest.** He shall have power to sign warrants of arrest and to cause arrests for infraction, within the city, of the laws of the state and ordinances and other regulations of the city. He shall have general power to administer oaths and take affidavits.

§ 64. **May revoke licenses.** He shall have power to revoke licenses pending the action of the city council.

§ 65. **Office consolidated with city clerk's in certain cities.** In cities having a population of less than twenty thousand, according to the last preceding state enumeration, the office of city

manager may be consolidated with that of city clerk, or other officer of similar functions.

§ 66. **Disability.** During the disability of the city manager the city council shall designate some properly qualified person to execute the functions of the office.

ARTICLE VIII.

Administrative Departments.

§ 67. **Duties of departmental heads.** The heads of departments shall perform, or delegate the performance of, all duties imposed upon them by the city manager in pursuance of the general regulations of the city council. They shall, of their own initiative, or upon his order, at any time, submit to him statements of the needs of their several departments and propose any measures, with or without specifications, which they may deem necessary or advisable for the welfare of the city. They shall prepare reports and make estimates of the probable financial requirements of their departments, in such form and at such times as the advisory members of the board of estimate and apportionment. They shall assemble upon the call of the city manager for general consideration of the affairs of the city. They shall recommend the appointment and dismissal of subordinate officers and employees in their several departments.

§ 68. **Prohibitions and limitations.** The powers of all administrative officers and boards shall be administrative and advisory only, with such exceptions as are hereinafter noted, and shall not extend to the enactment of general regulations, except for the purpose of controlling the organization within their several departments. No administrative officer or board shall buy, rent, lease, sell or condemn any real estate, buildings, public utility plants. Nor, except as specially provided in article ten, shall any such officer or board enter into any contracts, or borrow money on the credit of the city, or levy taxes or assessments, or receive gifts on behalf of the city, except for school purposes, of money, real estate or buildings, or grant franchises, or fix rates at which water, gas, electricity or any other commodity may be furnished to consumers.

§ 69. **Authority for expenditures.** The administrative officers of the city other than the board of education shall not make any

expenditures except upon the authority of a resolution of the city council. But the city council may at its discretion set aside for any department a fund for emergency expenses, and enact rules governing the same.

§ 70. **Special provisions.** (1) Nothing in this article shall so be construed as to limit the tax-collecting officer in the exercise of the powers and duties granted by the general laws of the State and the charter of the city to take action for the collection of delinquent taxes and assessments.

(2) The corporation counsel or city attorney shall not compromise any suit to which the city is a party, without the consent of the city council.

(3) The board or commissioner of health, or the officers exercising the powers of boards or commissioner of public safety, may take any action, not of general application, to prevent disease, fire, violence or any other menace to public health or safety, which shall have been granted by law before the adoption of this act, or which shall be granted. And for these purposes they may command the assistance of the police. The said board or commissioner of health shall have power to draw up a health code which the city council may adopt and incorporate in the ordinances of the city, or reject, but not amend.

§ 71. **Certain duties of treasurer.** The treasurer of the city shall act as the fiscal officer of the board of education and shall be subject to its orders.

§ 72. **Art commissioners.** Art commissioners, if any, shall have power to receive gifts, and shall be unrestricted in the use of the funds at their disposal by any other officers in the purchase of works of art. Their functions shall not be consolidated with those of any other department, but members of other departments may act ex-officio on such board. . . .

ARTICLE IX.

Appointments and Removals.

§ 75. **Direct appointments by city council.** The city manager, assessors, art commissioners, if any, civil service commissioners, if any, judges of the several courts, justices of the peace, constables, and commissioners of deeds, as are provided for by law, shall be appointed by a vote of a majority of the city council, upon the

nomination of any alderman. The term of all judges, justices of the peace, and constables shall be four years. The term of commissioners of deeds shall be two years; of art commissioners, civil service commissioners and assessors three years.

§ 76. **Appointments by department heads.** (1) With the consent of the city council, the heads of departments may appoint one or more persons who shall act as their personal assistants. They may also appoint, with such consent, other persons, to serve temporarily on a per diem compensation.

(2) The corporation counsel or city attorney, with the consent of the city council, may appoint his legal assistants.

§ 77. **Appointments by city manager.** The appointment of all other officers and employees shall be made by the city manager, subject to confirmation or rejection by the city council.

§ 78. **Exceptions to sections above.** But nothing in this act shall derogate from or alter the effect of the laws applicable to the city in so far as they relate to appointments under the direction of civil service commissioners. The commissioners of art may appoint curators and other special assistants.

§ 79. **Term of officers of unfixed tenure.** The term of all officers and employees of unfixed tenure shall be at the pleasure of the appointing officer or body. No officer or appointee appointed by the city manager shall be removed without the consent of the latter. Any officer of unfixed tenure may be removed without a hearing, but when so removed may demand of the appointing body a written statement of the cause for such removal, signed by all the members voting for the same. A failure on the part of the appointing body to issue such statement within two weeks after the receipt of such demand shall constitute a breach of the official oath of office.

§ 80. **Removal of officers of fixed tenure.** Officers whose tenure is fixed by this act may be removed by a majority of all members elected to the city council after notice of at least one week, and a public trial upon specific charges. The salaries of such officers shall not be lowered during the term for which they were appointed.

§ 81. **Disciplinary power of police and fire departments.** The heads of the police and fire departments shall have power to suspend any of their subordinate officers in the interests of discipline. But any officer suspended for a period longer than three days may appeal to the city council at any of its regular

sessions, and they shall review his case and make any restitution, within the law, which they may deem advisable.

§ 82. **Saving clause.** Nothing in this article shall apply to the board of education, its officers and employees.

ARTICLE X.

The Department of Education.

. . . .¹

ARTICLE XI.

The Initiative and Referendum.

. . . .²

ARTICLE XII.

Miscellaneous Provisions.

. . . .

§ 105. **Reversion to the charter.** Any city which shall have operated for more than six years under the provisions of this act may abandon such organization hereunder and may resume its charter by proceeding as follows: Upon the petition of not less than twenty-five per centum of the electors of such city, a special election shall be called, at which the following proposition shall be submitted: "Shall the city of (name of city) abandon its organization under the optional third class cities law and resume its charter?" If a majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding regular municipal election shall be those prescribed by the charter, and upon the qualification of such officers, such city shall become a city under the charter, but such change shall not in any manner or degree affect the property, right or liability of any nature of such city, but shall merely extend to such change in its form of government. The sufficiency of such petition shall be determined, the election ordered and conducted and the results declared generally as provided by article four of this act in so far as the provisions thereof are applicable.

¹ The council was given the power to appoint the board of education, which was, so far as possible under other existing laws, made a part of the general city administration.

² The initiative and referendum provisions are, with minor changes, like those of the amendment to the charter of Los Angeles, to be found as § 93.

73. The Charter of Dayton, Ohio, 1913.

The home rule amendment to the Ohio constitution was adopted in September, 1912. Immediately thereafter the Chamber of Commerce of Dayton appointed a committee under the chairmanship of John H. Paterson, the president of the National Cash Register Company, to consider the adoption of a new charter. This committee recommended the manager plan. As a result of its report, a committee of one hundred was created, and it secured the election of a charter commission pledged to the manager form of government. In the meantime, the flood of May 20, 1913, had occurred, though it had little to do with the change in the form of government.

The charter framed by the charter commission was adopted by the people on August 12, 1913, and went into effect January 1, 1914. Dayton was the first city of any size to adopt the manager plan of government. Its first manager, Henry M. Waite, proved to be very successful, and the publicity resources of the National Cash Register Company were employed in spreading the news of Dayton's achievement. It is not to be wondered at, therefore, that the Dayton plan became an inspiration to scores of other cities. The Dayton charter is in most respects a great improvement over the Lockport draft, and except for the provision for the recall of the manager by the people, it still may be regarded today as a model charter.¹

SOURCE—*The Charter of the City of Dayton, Ohio*, as Prepared and Proposed by the Charter Commission and Adopted at the Election on August 12, 1913. (Reprinted by the city, January 1922. The charter was also reprinted by the Dayton Bureau of Research, March 1918.)

POWERS OF CITY.

Form of Government.

.....

Section 3. General description: The form of government provided in this article shall be known as the "Commission-Manager

¹The model charter of the National Municipal League has not been reprinted in this collection, because of its ready availability. It may be obtained from the National Municipal League, 261 Broadway, New York City.

Plan," and shall consist of a commission of five citizens, who shall be elected at large in manner hereinafter provided. The Commission shall constitute the governing body with powers as hereinafter provided to pass ordinances, adopt regulations, and appoint a chief administrative officer to be known as the "City Manager," and exercise all powers hereinafter provided.

NOMINATIONS AND ELECTIONS OF COMMISSIONERS.

Section 4. All Commissioners shall serve for a term of four years and until their successors are elected and have qualified. Except that at the first election the three candidates having the highest number of votes shall serve for four years, and the two candidates having the next highest number of votes shall serve for two years.

Vacancies.

Section 5. Vacancies in the Commission shall be filled by the Commission for the remainder of the unexpired term, but any vacancy resulting from a recall election shall be filled in the manner provided in such case.

Qualifications.

Section 6. Members of the Commission shall be residents of the city and have the qualifications of electors therein. Commissioners and other officers and employes shall not hold any other public office or employment except in the State Militia, and shall not be interested in the profits or emoluments of any contract, job, work or service for the municipality. Any Commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may become interested may be declared void by the Commission.

No Commissioner or other officer or employee of said city shall accept any frank, free ticket, passes or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor. Such prohibition of free service shall not apply to policemen or firemen in uniform or wearing their official badges, where same is provided by ordinance.

ELECTION PROVISIONS.

. . . .

Recall Elections.

Section 13. Any or all of the Commissioners, or the City Manager, provided for in this charter may be removed from office by the electors. The procedure to effect such removal shall be as follows: . . .

INITIATIVE, REFERENDUM AND PROTEST.

. . . .

Mayor.

Section 36. The Mayor shall be that member of the Commission who, at the regular municipal election at which the three Commissioners were elected, received the highest number of votes, except that at the first regular municipal election held under this charter the Mayor shall be the Commissioner receiving the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen Mayor by the remaining members of the Commission. In event of a vacancy in the office of Mayor, the remaining members of the Commission shall choose his successor for the unexpired term, from their own number. The Mayor shall be the presiding officer, except that in his absence a president pro tempore may be chosen. The Mayor shall exercise such powers conferred and perform all duties imposed upon him by this charter, the ordinances of the city and the laws of the state. He shall be recognized as the official head of the city by the courts for the purposes of serving civil processes, by the Governor for the purposes of the military law, and for all ceremonial purposes.

Section 37. In the event the Commissioner who is acting as Mayor shall be recalled, the remaining members of the Commission shall select one of their number to serve as Mayor for the unexpired term. In the event of the recall of all of the Commissioners, the person receiving the highest number of votes at the election held to determine their successors shall serve as the Mayor.

Salaries and Attendance.

Section 38. The salary of each Commissioner shall be \$1200 per annum, except that of the Mayor, who shall receive \$1800 per annum.

For each absence of a Commissioner from a regular meeting of the Commission, unless authorized by a majority vote of all members thereof, there shall be deducted a sum equal to one per cent. (1%) of the annual salary of such member. Absence from five (5) consecutive regular meetings shall operate to vacate the seat of a member unless such absence be authorized by the Commission.

Meetings of the Commission.

Section 39. At ten o'clock A. M. on the first Monday in January, following a regular municipal election, the Commission shall meet at the usual place for holding the meetings of the legislative body of the city, at which time the newly-elected Commissioners shall assume the duties of their office. Thereafter the Commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that they shall meet not less than once each week. The Mayor, any two members of the Commission, or the City Manager, may call special meetings of the Commission upon at least twelve (12) hours' written notice to each member of the Commission, served personally on each member or left at his usual place of residence. All meetings of the Commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The Commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

Legislative Procedure.

Section 40. The Commission shall be judge of the election and qualifications of its members. A majority of all members elected shall constitute a quorum to do business. The affirmative vote of a majority of the members elected to the Commission shall be necessary to adopt any ordinance or resolution. The vote upon the passage of all ordinances and upon the adoption of such resolutions as the Commission by its rules shall prescribe, shall be taken by "Yea" and "Nay" and entered upon the journal. Every ordinance or resolution passed by the Commission shall be signed by the Mayor or two members, and filed with the Clerk within two days and by him recorded. . . .

Clerk.

Section 43. The commission shall choose a Clerk and such other officers and employees of its own body as are necessary. The

Clerk shall be known as the Clerk of the Commission and shall keep records and perform such other duties as may be required by this charter or the Commission.

Audit and Examination.

Section 44. The Commission shall cause a continuous audit to be made of the books of account, records and transactions of the administrative departments of the city. Such audit, during each fiscal year shall be made by one or more certified public accountants who hold a certificate issued by the State Board of Accountancy of Ohio or by a state maintaining an equal standard of professional requirements, which entitles the holder of such certificate to an Ohio certificate. The duties of the auditor or auditors so appointed shall include the certifications of all statements required under section 78 of this charter. Such statements shall include a general balance sheet, exhibiting the assets and liabilities of the city, supported by departmental schedules, and schedules for each utility publicly owned or operated; summaries of income and expenditure, supported by detailed schedules; and also comparisons, in proper classifications, with the last previous year. The report of such audit for each previous year shall be printed and a copy thereof furnished to the Ohio State Bureau of Inspection and Supervision of Public Offices, to each member of the Commission and to each citizen who may apply therefor; and a condensed summary thereof shall be published in the manner provided by the Commission.

Publication.

Section 45. Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose, and shall be authenticated by the signature of the presiding officer and the clerk of the Commission. Every ordinance or resolution shall be published at least once within ten (10) days after its final passage in such manner as is provided by this charter.

Investigation by Commission.

Section 46. The Commission, or any committee thereof duly authorized by the Commission so to do, may investigate the financial transactions of any office or department of the city government and the official acts and conduct of any city official, and by similar investigations may secure information upon any matter. In con-

ducting such investigations the Commission, or any committee thereof, may compel the attendance of witnesses and the production of books, papers and other evidence, and for that purpose may issue subpoenas or attachments which shall be signed by the presiding officer of the Commission or the chairman of such committee, as the case may be, which may be served and executed by any officer authorized by law to serve subpoenas and other process. If any witness shall refuse to testify to any facts within his knowledge or to produce any papers or books in his possession, or under his control, relating to the matter under inquiry, before the Commission, or any such committee, the Commission shall have the power to cause the witness to be punished as for contempt. No witness shall be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony shall not be used against him in any criminal prosecution except for perjury committed upon such inquiry.

City Manager.

Section 47. The Commission shall appoint a City Manager who shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments. He shall be appointed without regard to his political beliefs and may or may not be a resident of the City of Dayton when appointed. He shall hold office at the will of the Commission and shall be subject to recall as herein provided.

Section 48. Powers and Duties of the City Manager. The powers and duties of the City Manager shall be:

- (a) To see that the laws and ordinances are enforced.
- (b) To appoint and, except as herein provided, remove all directors of the departments and all subordinate officers and employes in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone, and in the classified service all appointments and removals to be subject to the civil service provisions of this charter;
- (c) To exercise control over all departments and divisions created herein or that may be hereafter created by the Commission;
- (d) To attend all meetings of the Commission with the right to take part in the discussion but having no vote;
- (e) To recommend to the Commission for adoption such measures as he may deem necessary or expedient;

(f) To keep the Commission fully advised as to the financial condition and needs of the city; and

(g) To perform such other duties as may be prescribed by this charter or be required of him by ordinance or resolution of the Commission.

Salary.

Section 49. The City Manager shall receive such salary as may be fixed by ordinance of the Commission.

Investigations by the City Manager.

Section 50. The City Manager may without notice cause the affairs of any department or the conduct of any officer or employe to be examined. Any person or persons appointed by the City Manager to examine the affairs of any department or the conduct of any officer or employe shall have the same power to compel the attendance of witnesses and the production of books and papers and other evidence and to cause witnesses to be punished for contempt as is conferred upon the Commission by this charter.

DEPARTMENTS.

Departments Established.

Section 51. The following administrative departments are hereby established by this charter:

1. Department of Law.
2. Department of Public Service.
3. Department of Public Welfare.
4. Department of Public Safety.
5. Department of Finance.

Changes in Departments and Subdivisions Thereof.

Section 52. The Commission may by ordinance discontinue any department and determine, combine, and distribute the functions and duties of departments and subdivisions thereof.

Directors of Departments.

Section 53. A director for each department shall be appointed by the City Manager and shall serve until removed by the City Manager or until his successor is appointed and has qualified. He shall conduct the affairs of his department in accordance with the

rules and regulations made by the City Manager and shall be responsible for the conduct of the officers and employes of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the City Manager in all matters, the director of each department shall manage the department.

City Commission and Advisory Boards.

Section 54. The Commission may appoint a City Plan Board and upon the request of the City Manager shall appoint advisory boards. The members of such boards shall serve without compensation and their duty shall be to consult and advise with the various departments. The duties and powers of boards thus created shall be prescribed by ordinance.

DEPARTMENT OF LAW.

City Attorney.

Section 55. The City Attorney shall be an attorney at law admitted to practice in the State of Ohio and shall be the head of the Department of Law. He shall be the legal adviser of and attorney and counsel for the city, and for all officers and departments thereof in matters relating to their official duties. He shall prosecute and defend all suits for and in behalf of the city, and shall prepare all contracts, bonds and other instruments in writing in which the city is concerned and shall endorse on each his approval of the form and correctness thereof.

Section 56. The City Attorney shall be the prosecuting attorney of the municipal court. He shall have such number of assistants as the Commission by ordinance may authorize. He shall prosecute all cases brought before such court and perform the same duties, so far as they are applicable thereto, as are required of the prosecuting attorney of the county.

Section 57. When required to do so by resolution of the Commission, the City Attorney shall prosecute or defend for and in behalf of the city, all complaints, suits and controversies in which the city is a party, and such other suits, matters and controversies as he shall, by resolution or ordinance, be directed to prosecute or defend.

Section 58. The Commission, the City Manager, the director

of any department, or any officer or board not included within a department, may require the opinion of the City Attorney upon any question of law involving their respective powers and duties.

Section 59. The City Attorney shall apply, in the name of the city, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the city, or the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the city in contravention of law, or which was procured by fraud or corruption.

Section 60. When an obligation or contract made on behalf of the city granting a right or easement, or creating a public duty, is being evaded or violated, the City Attorney shall likewise apply for the forfeiture or the specific performance thereof as the nature of the case requires.

Section 61. In case any officer or Board fails to perform any duty required by law, the City Attorney shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty.

Section 62. In case the City Attorney, upon written request of any taxpayer of the city, fails to make any application provided for in the preceding three sections, such taxpayer may institute suit or proceedings for such purpose in his own name on behalf of the city. No such suit or proceeding shall be entertained by any court until such request to the City Attorney shall first have been made, nor until the taxpayer shall have given security for the costs of the proceeding.

Section 63. No such action to enjoin the performance of a contract entered into, or the payment of any bonds or notes issued by the city, shall be brought or maintained unless commenced within one year from the date of such contract, bonds or notes.

Section 64. If the court hearing any such action be satisfied that the taxpayer had good cause to believe his allegations were well founded, or that they are sufficient in law, it shall make such order as the equity and justice of the case demand. In such case the taxpayer shall be allowed his costs, and if judgment be finally entered in his favor, he may be allowed as part of the costs a reasonable compensation for his attorney.

City Attorney to Act as City Solicitor.

Section 65. In addition to the duties imposed upon the City Attorney by this charter or required of him by ordinance, he shall

perform the duties which are imposed upon city solicitors by the general law of the state, beyond the competence of this charter to alter or require.

DEPARTMENT OF PUBLIC SERVICE.

General Powers and Duties.

Section 66. Subject to the supervision and control of the City Manager in all matters, the Director of Public Service shall manage and have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, streams, and water courses; of all public buildings; of boulevards, squares, and other public places and grounds belonging to the city or dedicated to public use, except parks and playgrounds. He shall manage market houses, sewage disposal plants and farms and all public utilities of the city. He shall have charge of the enforcement of all the obligations of privately owned or operated public utilities enforceable by the city. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, and estimates for such public work; the cleaning, sprinkling, and lighting of streets and public places; the collection and disposal of waste; the preservation of contracts, papers, plans, tools, and appliances belonging to the city and pertaining to the department.

DEPARTMENT OF PUBLIC WELFARE.

General Powers and Duties.

Section 67. Subject to the supervision and control of the City Manager in all matters, the Director of Public Welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the city; the use of all recreational facilities of the city including parks and playgrounds. He shall have charge of the inspection and supervision of all public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health, the prevention and restriction of disease, the prevention, abatement and suppression of nuisances, and the sanitary inspection and supervision of the production, transportation, storage and sale of food and foodstuffs. He shall cause a complete

and accurate system of vital statistics to be kept. In time of epidemic, or threatened epidemic, he may enforce such quarantine and isolation regulations as are appropriate to the emergency. The Director of Public Welfare shall provide for the study of and research into causes of poverty, delinquency, crime and disease and other social problems in the community and shall by means of lectures and exhibits promote the education and understanding of the community in those matters which affect the public welfare.

Health Officer.

Section 68. The Health Officer of the city shall be under the direction and control of the director of public welfare, and shall enforce all ordinances and laws relating to health and shall perform all duties and have all the powers provided by general law relative to the public health to be exercised in municipalities by health officers; provided that regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed shall be enacted by the Commission and enforced as provided herein.

DEPARTMENT OF PUBLIC SAFETY.

General Powers and Duties.

Section 69. Subject to the supervision and control of the City Manager in all matters, the Director of Public Safety shall be the executive head of the divisions of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings as may be ordained by the Commission or established by the general law of the State of Ohio. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

Division of Police.

Section 70. The Chief of Police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employes constituting the police force, under such rules and regulations as the director of public safety may prescribe. The police force shall be composed of a chief of police and such officers, patrolmen, and other employes as the City Manager may determine. In case of riot, emergency, at time of elections or similar occasions,

the Director of Public Safety may appoint additional patrolmen and officers for temporary service who need not be in the classified service.

Section 71. No person shall act as special policeman, special detective, or other special police officer for any purpose whatsoever, except upon written authority from the Director of Public Safety. Such authority shall be exercised only under the direction and control of the Chief of Police and for a specified time.

Division of Fire.

Section 72. The fire chief shall have exclusive control of the stationing and transfer of all firemen and other officers and employes constituting the fire force under such rules and regulations as the Director of Public Safety may prescribe. The fire force shall be composed of a chief and such other officers, firemen, and employes as the City Manager may determine. In case of riot, conflagration, or emergency, the Director of Public Safety may appoint additional firemen and officers for temporary service who need not be in the classified service.

Supervision in Fire and Police Divisions.

Section 73. The Chief of Police and Fire Chief shall have the right to suspend any of the officers or employes in their respective divisions, who may be under their management and control, for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority or for any other just and reasonable cause. If any officer or employe be suspended, as herein provided, the chief of the division concerned shall forthwith in writing certify the fact, together with the cause for the suspension and render judgment thereon, which judgment, if the charge be sustained, may be suspension, reduction in rank, or dismissal, and such judgment in the matter shall be final, except as may be provided in the rules and regulations of the Civil Service Board. The Director of Public Safety in any such investigation shall have the same power to administer oaths and secure the attendance of witnesses and the production of books and papers as is conferred upon the Commission.

Suspension of Chief of Police and Fire Chief.

Section 74. The City Manager shall have the exclusive right to suspend the Chief of Police and Fire Chief for incompetence,

neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause. If either of such chiefs be so suspended the City Manager shall forthwith certify the fact, together with the cause of suspension, to the Commission, who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final.

Relief of Policemen and Firemen.

Section 75. The Commission may provide by general ordinance for the relief, out of the police or fire funds, of members of the divisions of police and fire, temporarily or permanently disabled in the discharge of their duty. Nothing herein shall impair, restrict, or repeal any provision of general law authorizing the levying of taxes to provide for firemen, police, and sanitary police pension funds, and to create and perpetuate boards of trustees for the administration of such funds.

DEPARTMENT OF FINANCE.

General Duties of the Director of Finance.

Section 76. The duties of the Director of Finance shall include the keeping and supervision of all accounts and the custody of all public money of the city; the purchase, storage and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees, and such other duties as the Commission may, by ordinance, require.

City Accountant.

Section 77. The City Accountant shall install and have supervision over the accounts of all departments and offices of the city. Whenever practicable the books of financial account shall be kept in the office of the Department of Finance. The City Accountant shall require daily departmental reports of money receipts and the disposition thereof; and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof.

Upon the death, resignation, removal or expiration of the term of any officer, the City Accountant shall examine the accounts of such officer and report his findings to the City Manager.

Accounting Procedure.

Section 78. Accounting procedure shall be devised and maintained for the city adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements; and the recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as shall be necessary to show the full effect of such transactions for each fiscal year upon the finances of the city and in relation to each department of the city government, including distinct summaries and schedules for each public utility owned and operated.

Assessments and Licenses.

Section 79. The City Accountant shall have charge of the preparation and certification of all special assessments for public improvements; the mailing of notices of such assessments to property owners and all other duties connected therewith; the collection of such assessments as are payable directly to the city and the preparation and certification of all unpaid assessments to the county auditor for collection. He shall issue all licenses and collect all fees therefor and shall pay the same to the City Treasurer in the manner provided by ordinance.

Payment of Claims.

Section 80. No warrant for the payment of any claim shall be issued by the City Accountant unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the City Manager. Before issuing such voucher the supplies and materials delivered, or work done, shall be duly inspected and certified to by the head of the proper department or office, or by a person designated by him. The head of each department or office shall require proper time reports from all service rendered to be certified by those having cognizance thereof, to serve a basis for the preparation of pay-roll vouchers. Each director of a department and his surety shall be liable to the city for all loss or damage sustained by the city by reason of the negligent or corrupt approval of any claim against the city in his department. Prior to drawing of a warrant for the payment of any voucher or claim, the City Accountant may at his discretion cause an investigation or inspec-

tion to be made by a person designated by him, and shall have power to summon persons and examine them under oath or affirmation, which oath or affirmation he may administer.

Sinking Fund.

Section 81. The members of the Commission, the City Manager, and the Director of Finance shall constitute the Sinking Fund Trustees. The Mayor shall be the president and the Director of Finance shall be the secretary of the Trustees of the Sinking Fund. The Trustees of the Sinking Fund shall manage and control the sinking fund in the manner provided by laws of the State of Ohio or by ordinance.

City Treasurer.

Section 82. The division of the treasury shall be in charge of the City Treasurer who shall be the custodian of all public money of the city and all other public money coming into his hands as City Treasurer. The City Treasurer shall keep and preserve such moneys in the place or places determined by ordinance or by the provisions of any law applicable thereto.

Section 83. Except as otherwise provided in this charter, the City Treasurer shall, under the supervision of the Director of Finance, collect, receive and disburse all public money of the city upon warrant issued by the City Accountant and shall also receive and disburse all other public money, coming into his hands as City Treasurer, in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

City Purchasing Agent.

Section 84. The City Purchasing Agent shall, in manner provided by ordinance, purchase all supplies for the city, sell all real and personal property of the city not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have charge of such storerooms and storehouses of the city as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the city and not delivered directly to the various departments, and he shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be indorsed as approved by the City Purchasing Agent.

Section 85. The City Purchasing Agent may require from the director of each department at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

Upon certification that funds are available in the proper appropriations such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the City Purchasing Agent from purchasing goods for cash to the credit of the store's account, to be furnished the several departments on requisition, goods so furnished to be paid for by the department furnished therewith by warrant made payable to the credit of the store's account.

The City Purchasing Agent shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

Before making any purchase or sale, the City Purchasing Agent shall give opportunity for competition, all proposals to be upon precise specifications, and under such rules and regulations as the Commission shall establish. Each order of purchase or sale to be approved and countersigned by the City Manager or his deputy.

Emergencies.

Section 86. In cases of emergency purchases may be made without competition, if a sufficient appropriation has theretofore been made against which such purchases may lawfully be charged. In such cases a copy of the order issued shall be filed with the City Purchasing Agent, together with a certificate by the head of the department, stating the facts of the emergency. A copy of this certificate shall also be attached to and filed with the voucher covering payment for the supplies.

Certification of Funds.

Section 87. No contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for the expenditure of money be passed by the Commission, or be authorized by any officer of the city, unless the Director of Finance first certify to the Commission or to the proper officer, as the case may be, that the money required for such contract, agreement, obligation or expenditure, is in the treasury, to the credit of the fund from which it is to be drawn, and

not appropriated for any other purpose, which certificate shall be filed and immediately recorded. The sum so certified shall not thereafter be considered unappropriated until the city is discharged from the contract, agreement, or obligation.

Money in the Fund.

Section 88. All moneys actually in the treasury to the credit of the fund from which they are to be drawn, and all moneys applicable to the payment of the obligation or appropriation involved, that are anticipated to come into the treasury before the maturity of such contract, agreement, or obligation, from taxes or assessments, or from sales or services, products or by-products, or from any city undertaking, fees, charges, accounts and bills receivable or other credits in the process of collection; and all moneys applicable to the payment of such obligation or appropriation, which are to be paid into the treasury prior to the maturity thereof, arising from the sale or lease of lands or other property, and moneys to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purposes of such certificate, be deemed in the treasury to the credit of the appropriate fund and subject to such certification.

Contracts for Public Advertising.

Section 89. All public advertising or publication necessary under the provisions of this charter shall be in a daily newspaper of general circulation within the city, and shall be done by contract, or in a journal published by the city as may be determined by ordinance. If such contract shall be with a newspaper it shall be entered into only after opportunity has been given for competition under such rules and regulations as the Commission may establish, and for a term of not longer than one year.

Contracts in Excess of \$500.

Section 90. No contract involving an expenditure in excess of five hundred dollars (\$500) shall be awarded except upon the approval of the City Manager and the Commission.

Bids in Excess of Estimate.

Section 91. In no instance shall contracts be let either as a whole, or in aggregate, if bids for parts of the work are taken, which exceed the estimate for the improvement contemplated.

Contracts—When Void.

Section 92. All contracts, agreements or other obligations entered into and all ordinances passed, resolutions and orders adopted, contrary to the provisions of the preceding sections, shall be void.

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IMPROVEMENTS AND ASSESSMENTS.

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APPROPRIATION OF PROPERTY.

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FRANCHISES AND PUBLIC UTILITIES.

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APPROPRIATIONS.**The Estimate.**

Section 156. The fiscal year of the city shall begin on the first day of January. On or before the first day of November of each year the City Manager shall submit to the Commission an estimate of the expenditures and revenues of the city departments for the ensuing year. This estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the City Manager. The classification of the estimate of expenditures shall be as nearly uniform as possible for the main functional divisions of all departments, and shall give in parallel columns the following information:

(a) A detailed estimate of the expense of conducting each department as submitted by the department.

(b) Expenditures for corresponding items for the last two fiscal years.

(c) Expenditures for corresponding items for the current fiscal year, including adjustments due to transfers between appropriations plus an estimate of expenditure necessary to complete the current fiscal year.

(d) Amount of supplies and materials on hand at the date of the preparation of the invoice.

¹Sections 93-107, relating to civil service, will be found as § 108.

(e) Increase or decrease of requests compared with the corresponding appropriations for the current year.

(f) Such other information as is required by the commission or that the City Manager may deem advisable to submit.

(g) The recommendation of the City Manager as to the amounts to be appropriated with reasons therefor in such detail as the Commission may direct.

Sufficient copies of such estimate shall be prepared and submitted, that there may be copies on file in the office of the Commission for inspection by the public.

Appropriation Ordinance.

Section 157. Upon receipt of such estimate the Commission shall prepare an appropriation ordinance in such form as may be prescribed by ordinance or resolution. Before finally acting upon such tentative appropriation the Commission shall fix a time and place for holding public hearings upon the tentative appropriation, and shall give public notice of such hearings. Following the public hearings and before its final passage, the appropriation ordinance shall be published with a parallel comparison with the recommendation of the City Manager. The Commission shall not pass the appropriation ordinance until ten (10) days after its publication, nor before the second Monday in January.

Revision of Appropriations.

Section 158. If, at the beginning of the term of office of the first Commission elected under the provisions of this charter, the appropriations for the expenditures of the city government for the current fiscal year have been made, said Commission shall have power by ordinance to revise, to repeal or change said appropriations and to make additional appropriations.

Transfer of funds.

Section 159. Upon request of the City Manager the Commission may transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated to the same office or department.

Limitation on Appropriations.

Section 160. At the close of each fiscal year the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriation.

Any accruing revenue of the city, not appropriated as hereinbefore provided, and any balances at any time remaining after the purposes of the appropriation shall have been satisfied or abandoned, may from time to time be appropriated by the Commission to such uses, as will not conflict with any uses for which specifically such revenues accrued.

No money shall be drawn from the treasury of the city, nor shall any obligation for the expenditure of money be incurred, except pursuant to the appropriations made by the Commission.

GENERAL PROVISIONS.

Compensation of Officers and Employees.

Section 161. The Commission shall fix by ordinance the salary or compensation of the heads of departments, its own employees, except as is provided by this charter, the salary or compensation of the members of the divisions of police and fire under the immediate control of the chief thereof, and of members of boards in the unclassified service of the city.

The City Manager shall fix the number and salaries or compensation of all other officers and employees.

The salaries or compensations so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the City Manager in accordance with the rules and regulations adopted by the Civil Service Board. All such salaries and rates of pay shall be reported to the City Employment Officer forthwith. All fees and moneys received or collected by officers and employees shall be paid into the City Treasury.

Official Bonds.

Section 162. The Commission or City Manager in fixing the salary of any officer, clerk, or employe shall determine whether such officer, clerk or employe shall give a bond and the amount thereof,

which bond shall be procured from a regularly accredited surety company authorized to do business under the laws of Ohio. Premiums on such bonds shall be paid by the City. . . .

Hours of Labor.

Section 167. The commission shall have power to provide by ordinance that on any public work carried on by the municipality, whether done by contract or otherwise, not to exceed eight hours a day shall constitute a day's work. . . .

Amendments.

Section 169. Amendments to this charter may be submitted to the electors of the city by a majority vote of the Commission, and shall be submitted by the Commission when a petition signed by ten (10) per cent of the electors of the city, setting forth any such proposed amendment shall have been filed with the election authorities in the manner and form prescribed herein for the submission of ordinances by an initiative petition. The amendment shall be submitted to the electors at the next regular municipal election if one shall occur not less than sixty (60) nor more than one hundred and twenty (120) days after its passage; otherwise it shall provide for the submission of the amendment at a special election to be called and held within the time aforesaid. Not less than thirty (30) days prior to such election the clerk of the Commission shall mail a copy of the proposed amendment to each elector whose name appears upon the registration books of the last regular municipal or general election. If such proposed amendment be approved by a majority of the electors voting thereon it shall become a part of the charter at the time fixed therein.

When Charter Takes Effect.

Section 170. For the purpose of nominating and electing officers and exercising the powers of the city as provided herein, this charter shall take effect from the time of its approval by the electors of the city. For the purpose of establishing departments, divisions and offices, and distributing the functions thereof, and for all other purposes it shall take effect on the first day of January, 1914.

74. Charter of Cleveland, Ohio, 1924.

Cleveland is the largest American city operating under the city manager plan. The sections of the charter which follow are those which deal with the appointment and powers of the city manager and the departmental organization. The very important provisions relating to the election of the council by proportional representation will be found as § 87.

SOURCE—*The Charter of the City of Cleveland* (Published by the City Clerk, November, 1923), 11-14.

ADMINISTRATIVE SERVICE.

City Manager—Appointment and Removal.

Section 32. The Council shall appoint a City Manager who shall be the chief executive officer of the city. He shall be chosen solely on the basis of his executive and administrative qualifications and need not when appointed be a resident of the city or state. No member of the Council shall be chosen as City Manager. The City Manager shall not be appointed for a definite term but shall be removable at the pleasure of the Council. If removed at any time after he has served six months he may demand written charges and the right to be heard thereon at a public meeting of the Council prior to the date on which his final removal shall take effect, but pending and during such hearing the Council may suspend him from office. The action of the Council in suspending or removing the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for any such suspension or removal in the Council. In case of the absence or disability of the Manager the Council may designate some qualified person to perform the duties of the office. The Manager shall receive such compensation as may be fixed by the Council.

Appointments by City Manager.

Section 33. The City Manager shall be responsible to the Council for the proper administration of all affairs of the city placed in his charge and to that end shall appoint all directors of departments. He shall also appoint all officers and members of

commissions not included within regular departments, except as otherwise provided in this Charter. Appointments made by the City Manager shall be on the basis of executive and administrative ability and of the training and experience of such appointees in the work which they are to administer. All such officers shall be immediately responsible to the City Manager and may be removed by him at any time. In case of removal, if the officer removed so demand, a written statement shall be made to him by the City Manager of the reasons therefor and he shall be given a public hearing by the City Manager before the order of removal is made final. The statement of the City Manager and any written reply of the officer thereto shall be filed as a public record in the office of the City Clerk.

Council Forbidden to Interfere in Appointments.

Section 34. Neither the Council nor any of its committees or members shall dictate or attempt to dictate the appointment of any person to, or his removal from, office or employment by the City Manager or any of his subordinates, or in any manner interfere in the appointment of officers and employes in the administrative service. Except for the purpose of inquiry, the Council and its members shall deal with that part of the administrative service for which the City Manager is responsible solely through such Manager, and neither the Council nor any members thereof shall give orders to any of the subordinates of the City Manager either publicly or privately.

Duties of City Manager.

Section 35. It shall be the duty of the City Manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that the ordinances of the city and the laws of the state are enforced; to make such recommendations to the Council concerning the affairs of the city as may seem to him desirable; to keep the Council advised of the financial condition and future needs of the city; to prepare and submit to the Council the annual budget estimate; to prepare and submit to the Council such reports as may be required by that body; and to perform such other duties as may be prescribed by this charter or be required of him by ordinance or resolution of the Council.

City Manager's Right in Council.

Section 36. The City Manager, the directors of all departments, and such other officers of the city as may be designated by vote of the Council, shall be entitled to seats in the Council. Neither the City Manager nor any such director or officer shall have a vote in the Council, but the City Manager shall have the right to take part in the discussion of all matters coming before the Council, and the directors and other officers shall be entitled to take part in all discussions of the Council relating to their respective departments and offices.

Establishment and Discontinuance of Departments.

Section 37. There shall be a Department of Law, a Department of Finance, a Department of Public Utilities, and such other departments and offices as may be established by ordinance. The Council may discontinue any department or office established by ordinance, and may prescribe, combine, distribute or abolish the functions and duties of departments and offices; but no function or duty assigned by this Charter to a particular department or office shall be abolished or assigned to any other department or office. No administrative department or office shall be established or discontinued until the recommendations of the City Manager thereon shall have been heard by the Council. Departments and offices existing at the time of the adoption of this section, and not specifically mentioned therein, shall continue as though established thereby but subject to alteration or discontinuance by ordinance.

Investigations by Council or City Manager.

Section 38. The Council, the City Manager, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any department or office of the city and to make investigation as to city affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. It shall be the duty of the City Manager to designate a police officer to serve such subpoenas. The Council shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena, or to produce such books, papers and other evidence, and shall have the power to punish any such contempt in the manner provided by ordinance.

Directors of Departments.

Section 39. At the head of each department there shall be a director who shall have supervision and control of the department. He shall have power to prescribe rules and regulations, not inconsistent with this Charter, for the conduct of the officers and employes of his department; for the distribution and performance of its business; and for the custody and preservation of the books, records, papers and property under its control.

Department Divisions.

Section 40. The work of the several departments shall be distributed among such divisions thereof as are established by this Charter and as may be established by the Council by ordinance. There shall be a commissioner, or chief, in charge of each division who shall be appointed, and may be removed, by the director of the department in conformity with the civil service provisions of this Charter. Each commissioner shall, with the approval of the director of his department, appoint all officers and employes of his division and have supervision and control of its affairs.

Advisory Boards.

Section 41. The director of a department, with the approval of the City Manager, may appoint a board composed of citizens qualified to act in an advisory capacity to the commissioner of any division under his supervision. The members of any such board shall serve without compensation and their duty shall be to consult and advise with the commissioner, but not to direct the conduct of the division. Any recommendation of such board shall be in writing and become a part of the record of the department. Stated public meetings of such boards shall be called by the commissioner for the consideration of the affairs of the division. The commissioner of the division shall be chairman of such meetings.

Reports of Directors and Officers.

Section 42. The director of each department and the head of each office, shall annually, on such date as may be fixed by the Council, render to the City Manager a full report of the transactions of his department or office for the year, and shall furnish the Council or the City Manager at any time such information relating to his department or office as either may require.

75. Charter of Kansas City, Missouri, 1925.

The principal peculiarity of the Kansas City charter of 1925 is the provision for the election of the council partly at large and partly by district.

SOURCE—*Proposed Charter of Kansas City, Missouri, Submitted to the Electors to be Voted upon February 24, 1925* (Kansas City, 1924), 12-13. [The charter was adopted, becoming effective April 10, 1926.]

ARTICLE II.

THE COUNCIL.

Section 6. The Council. The powers of the city, except as otherwise provided in this charter, shall be vested in a council and shall be exercised as herein provided. The council shall consist of nine members, one of whom shall be the mayor. The mayor shall be elected by the qualified voters of the city at large. The remaining eight members shall be elected as follows:

One member shall be elected from each of the four districts, hereinafter provided for, by the qualified voters of each such respective district; and four members shall be elected by the qualified voters of the city at large, but not more than one of such four members elected at large shall reside in the same district. To be eligible to membership in the council, each member, except the mayor, must have maintained his residence in his district for at least six months next prior to the date of the regular municipal election. The members of the council, including the mayor, shall be qualified voters of the city; shall have paid city and county taxes for two years next before the day of their election; shall, before the day of election, have attained the age of twenty-five years; and shall, at the same date, have resided at least five years in the territory embraced within the city limits.

76. City Managers' Code of Ethics, 1924.

The City Managers' Association was formed in 1914 and has held a convention in each subsequent year. These meetings have been attended by an increasing number of members. It was the idea of those who originated the manager plan, that a city managers' profession should be

developed. This development has been a matter of slow growth, but there is no doubt that considerable progress has been made in that direction. The City Managers' Association now employs a secretary and publishes a monthly periodical.

The city managers are becoming, year by year, more conscious of their professional character and are deliberately endeavoring to build up for themselves a better standard. No better example of this can be found than the Code of Ethics drawn up at the Montreal meeting of the Association, September 25, 1924.

SOURCE—*City Manager Magazine*, VII, No. 3 (March, 1925), 178-179.

1. The position of City Manager is an important position and an honorable position and should not be accepted unless the individual believes that he can serve the community to its advantage.

2. No man should accept a position of City Manager unless he believes in the Council-Manager Plan of Government.¹

3. In personal conduct a City Manager should be exemplary and he should display the same obedience to law that he should inculcate in others.

4. Personal aggrandizement and personal profit secured by confidential information or by his use of public time is dishonest.

5. Loyalty to his employment recognizes that it is the council, the elected representative of the people, who primarily determine the municipal policies, and are entitled to the credit for their fulfillment.

6. Although he is a hired employee of the council, he is hired for a purpose—to exercise his own judgment as an executive in accomplishing the policies formulated by the council, and to attain success in his employment he must decline to submit to dictation in matters for which the responsibility is solely his.

7. Power justifies responsibility, and responsibility demands power, and a City Manager who becomes impotent to inspire support should resign.

8. The City Manager is the administrator for all the people,

¹ The phrase "Council-Manager Government" means that form of municipal government in which the people choose a legislative body, be it called a Council, a Commission, or a Board of Directors, or something else, which employs a City Manager to exercise the administrative and executive functions of the city. [Note appended to the code as adopted.]

and in performing his duty he should serve without discrimination.

9. To serve the public well, a City Manager should strive to keep the community informed of the plans and purposes of the administration, remembering that healthy publicity and criticism are an aid to the success of any democracy.

10. A City Manager should deal frankly with the council as a unit and not secretly with its individual members, and similarly should foster a spirit of co-operation between all employees of the city's organization.

11. No matter how small the government unit under his management a City Manager should recognize his relation to the larger political subdivisions and encourage improved administrative methods for all.

12. No City Manager should take an active part in politics.

13. A City Manager will be known by his works, many of which may outlast him, and regardless of personal popularity or unpopularity, he should not curry favor or temporize but should in a far-sighted way aim to benefit the community of today and of posterity.

PART IX

THE DEVELOPMENT OF NOMINATING AND ELECTION MACHINERY ¹

77. Nine Separate Ballot Boxes in New York City Elections, 1870.

Prior to 1888, city elections were generally conducted by means of ballots prepared by the parties or the candidates. There were, in some cities, regulations as to size, color of paper, and distinguishing marks that might be used; but, in general, each party had a ballot clearly distinguishable from those of other parties. Even this did not prevent the counterfeiting of party ballots. For example, a Democratic ballot might appear in which the name of one Republican candidate had been substituted for a Democrat. The ballots were distributed outside the polls by party workers, and the voter was often unable to detect such frauds. Sometimes ballot box stuffing was resorted to, a voter managing to drop more than one ballot in the box. To facilitate this, ballots were sometimes printed on very thin paper.

One of the great difficulties with the old system of ballots was that in order to expedite the count it was necessary to have separate ballot boxes for different groups of offices. The following act shows the number of ballot boxes provided for in elections in New York City and County in 1870. There were nine in all. Obviously, it was difficult to watch nine boxes at once, and accordingly ballot box stuffing was facilitated.

SOURCE—*Laws of the State of New York, 1870* (Albany, 1870), I, Chap. 138.

¹ The subject of nominations and elections is largely a matter of state law and practice. The Australian ballot, the convention system, the direct primary, etc., are fully discussed in numerous general works on American government. There are several special works on elections, and an excellent volume of readings on parties and elections has been edited by Chester Lloyd Jones, (1912).

AN ACT in relation to elections in the city and county of New York.

Section 1. Hereafter, all officers to be elected by the people in the city and county of New York shall be chosen at the general election in November, except in cases where other elections may be authorized by law.

§ 2. At elections hereafter to be held in the city and county of New York, the boxes to be used in receiving the ballots thereat shall be marked and numbered successively as follows: Number one, "President;" number two, "General;"¹ number three, "Congress;" number four, "Senator;" number five, "Assembly;" number six, "City;" number seven, "School;" number eight, "Justices;" and number nine, "Inspectors of Election;" and at every election hereafter to be held in said city and county, such number of boxes, marked as aforesaid, shall be furnished, as may be required by law, to receive the ballots to be used at such election.

78. Official Ballot in New York Mayoralty Election, 1925.

On pages 416-417 is an example of the so-called Australian ballot used in the United States. The Australian ballot was first introduced in Louisville, Kentucky, and in Massachusetts in 1888. The ballot is prepared by public authority and at public expense.

In the ballot presented here, the names of candidates are arranged under the titles of the offices which they seek. At the right appears the party designation in words and at the left the party emblem, enabling illiterate voters to identify their candidates. In some cities a party column ballot is used in which the names of the candidates of a certain party for all offices are arranged, under the title or emblem of that party. The form of ballot here reproduced

¹ § 3. "All other officers in whose election all the voters of said city and county alike participate, except those herein designated to be voted for on separate ballots, shall be voted for upon one ballot, which, upon the face thereof, shall contain a designation of the office, and the name or names of the person or persons to be voted for, or such of them as any voter may desire to vote for, and which when folded, shall be indorsed or show, upon the outside, the words "General, number two," and be deposited in box number two."

is generally believed superior. If the party designation were omitted, it would be a satisfactory non-partisan ballot.

The Australian ballot brought real secrecy to elections and did more than any other one thing to prevent bribery in them. Bribery is rather foolish if there is no way of insuring "delivery of the goods."

SOURCE—*Official Ballot for General Officers, County of New York, Twelfth Assembly District, Thirty-fifth Election District, November 3, 1925.*

79. Charter of the City of Boston, 1909.

Much of the effort of the early municipal reformers was directed toward securing non-partisanship in city elections. To this end they obtained the separation of state and national from local elections. They also endeavored to make the way easy for independent candidates by urging the English system of nomination by petition in connection with a non-partisan ballot. It was soon found, however, that nomination by petition led to multiplicity of candidacies and sometimes enabled the machine to divide the honest voters by running several candidates of apparent responsibility while the machine concentrated on its own favorite. In the effort to obviate this difficulty resort has sometimes been had to very large nominating petitions. Of this the Boston charter of 1909 gives an example.








SOURCE—*Acts and Resolves passed by the General Court of Massachusetts, 1909 (Boston, 1909), Chap. 486, as amended by the Acts of 1921, Chap. 65, and of 1924, Chap. 479.*









SECTION 52. No primary election or caucus for municipal offices shall be held hereafter in the city of Boston, and all laws relating to primary elections and caucuses for such offices in said city are hereby repealed.









SECTION 53.¹ Any registered voter who is qualified to vote for a candidate for any municipal elective office in such city may be a candidate for nomination thereto, and his name as such candidate shall be printed on the official ballot to be used at the municipal













¹ As amended by *Acts of 1924, Chap. 479*. The form of nomination paper specified is omitted here.





1. Mark only with a pencil having black lead.
2. To vote for a candidate whose name is printed on this ballot make a single mark.
3. To vote for a person whose name is not printed on this ballot write his name.
4. Any other mark than the cross X mark used for the purpose of voting or
5. If you tear, or deface, or wrongly mark this ballot, return it and obtain a








Vote for one!		MAYOR.	1
		JAMES J. WALKER.....	Democratic
		FRANK D. WATERMAN.....	Republican
		NORMAN THOMAS	Socialist
		JOSEPH BRANDON	Social Labor
		LAURENCE W. TRACY.....	Comwith Land
		WARREN SHAW FISHER.....	Progressive
			

Vote for one!		COMPTROLLER.	2
		CHARLES W. BERRY.....	Democratic
		JAMES E. FINEGAN.....	Republican
		CHARLES SOLOMON	Socialist
		WILLIAM WOODHOUSE	Social Labor
		EDWARD M. CAFFALL.....	Comwith Land
		WILLIAM W. WEINSTONE.....	Workers
		THOMAS BARRETT	Progressive
			

Vote for one!		PRESIDENT OF THE BOARD OF ALDERMEN.		3
		JOSEPH V. McKEE.....	Democratic	
		GEORGE U. HARVEY.....	Republican	
		SAMUEL E. BEARDSLEY.....	Socialist	
		OLIVE M. JOHNSON.....	Social Labor	
		MORRIS VAN VEEN.....	Comwith Land	
		CHARLES KRUMBEIN	Workers	
		JOSEPH J. DERSE, JR.....	Progressive	
				

Vote for three!		JUSTICES OF THE SUPREME COURT FOR THE FIRST		4
JUDICIAL DISTRICT.				
		JOHN L. WALSH.....	Democratic	
		LOUIS A. VALENTE.....	Democratic	
		ERNEST E. L. HAMMER.....	Democratic	
		DOUGLAS MATHEWSON.....	Republican	
		A. PARKER NEVIN.....	Republican	
		ROBERT S. CONKLIN.....	Republican	
		S. JOHN BLOCK.....	Socialist	
		MEYER LONDON	Socialist	
		JACOB BERNSTEIN	Socialist	
				
				
				

Vote for one!		JUSTICE OF THE CITY COURT.		5
		BERNARD L. SHIENTAG.....	Democratic	
		IRWIN KURTZ	Republican	
		ISAAC M. SACKIN	Socialist	
				

Vote for one!		SHERIFF.		6
		CHARLES W. CULKIN.....	Democratic	
		JOSEPH LEVENSON	Republican	
		LEONARD C. KAYE.....	Socialist	
		KOSTA GEORGEVITCH	Social Labor	
		EDWARD M. MARTIN.....	Workers	
		WILLIAM HALPERN	Progressive	
				

CTIONS

cross X mark in one of the squares to the right of an emblem opposite his name,
on a blank line under the names of the candidates for that office.
any erasure made on this ballot is unlawful.
other.

Vote for one!		COUNTY CLERK.	7
★		WILLIAM T. COLLINS	Democratic
🦅		CHARLES NOVELLO	Republican
🗡️		NINA PREY	Socialist
🌐		GEORGE A. HALL.....	Commonwealth
🔧		FRANK J. VAN PRAET.....	Workers
🏠		JOHN C. McGEE.....	Progressive

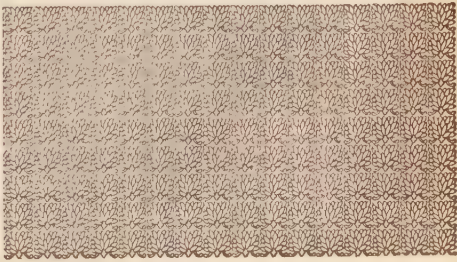
Vote for one!		PRESIDENT OF THE BOROUGH OF MANHATTAN.	10
★		JULIUS MILLER	Democratic
🦅		JOHN R. DAVIES.....	Republican
🗡️		EDWARD F. CASSIDY.....	Socialist
🌐		EDWARD J. McCORMICK.....	Social Labor
🔧		JOHN L. MURPHY.....	Commonwealth
🏠		ALEXANDER TRACHTENBERG	Workers
🏠		LAWRENCE CIOFFI	Progressive

Vote for one!		DISTRICT ATTORNEY.	8
★		JOAB H. BANTON.....	Democratic
🦅		CHARLES S. WHITMAN.....	Republican
🗡️		WILLIAM KARLIN	Socialist
🌐		ABRAHAM M. SCHERZER.....	Social Labor
🔧		ARTHUR S. LEEDS	Workers

Vote for one!		MEMBER OF ASSEMBLY—Twelfth Assembly District.	11
★		JOHN A. BYRNES.....	Democratic
🦅		HARRY HENLE	Republican
🗡️		BARNET FENSTER	Socialist

Vote for one!		REGISTER.	9
★		ANNIE MATHEWS	Democratic
🦅		IDA SLACK	Republican
🗡️		BERTHA H. MAILLY.....	Socialist
🌐		ROBERT SPACIL	Social Labor
🔧		ROSE PASTOR STOKES.....	Workers
🏠		DELIA A. MEYERS.....	Progressive

Vote for one!		ALDERMAN—Twelfth Aldermanic District.	12
★		JOHN J. BARRETT, JR.....	Democratic
🦅		JOHN F. BRISCAL.....	Republican
🗡️		ROBERT OTTO	Socialist



election; provided, that at or before five o'clock P. M. of the twenty-first day prior to such election nomination papers prepared and issued by the election commissioners, signed in person for the nomination for mayor by at least three thousand registered voters in said city qualified to vote for such candidate at said election, signed in person for the nomination for school committee by at least two thousand registered voters in said city qualified to vote for such candidate at said election and signed in person for the nomination for city councillor by at least one hundred registered voters in the ward, for which said nomination is sought, qualified to vote for such candidate at said election shall be filed with said election commissioners and the signatures on the same to the number required to make the nomination subsequently certified by the election commissioners as hereinafter provided. . . .

SECTION 54.¹ If a candidate nominated as aforesaid dies before the day of election, or withdraws his name from nomination, or is found to be ineligible, the vacancy may be filled by a committee of not less than five persons, or a majority thereof, if such committee be named, and so authorized in the nomination papers. Nomination papers shall not include candidates for more than one office. Every voter may sign as many nomination papers for each office to be filled as there are persons to be elected thereto and no more. Nomination papers shall be issued by the board of election commissioners on and after but not before the fifth Wednesday preceding the regular municipal election. Such papers shall be issued only to candidates who shall file with the election commissioners requests therefor in writing, containing their names with the first or middle name in full, the offices for which they are candidates, and their residences, with street and number, if any. Forthwith the election commissioners shall print or insert on such nomination papers the names of the candidates, the offices for which they are nominated and their residences, with street and number, if any. Not more than three hundred such nomination papers shall be issued to any candidate for mayor, and not more than two hundred such nomination papers shall be issued to any candidate for the school committee and to any candidate for the city council there shall be issued not more than ten such nomination papers for a ward or not more than sixty such nomination papers for a borough. No nomination papers except those issued in accordance with the provisions of this section shall be received or be valid.

¹As amended by *Acts* of 1924, Chap. 479.

SECTION 55.¹ Women who are qualified to vote for a member of the school committee may be nominated as and sign nomination papers for candidates for that office in the manner and under the same provisions of law as men.

SECTION 56. The names of candidates appearing on nomination papers shall when filed be a matter of public record; but the nomination papers shall not be open to public inspection until after certification. After such nomination papers have been filed, the election commissioners shall certify thereon the number of signatures which are the names of registered voters in the city qualified to sign the same. They need not certify a greater number of names than are required to make a nomination, with one fifth of such number added thereto. All such papers found not to contain a number of names so certified equivalent to the number required to make a nomination shall be invalid. The election commissioners shall complete such certification on or before five o'clock P. M. on the sixteenth day preceding the city election. Such certification shall not preclude any voter from filing objections as to the validity of the nomination. All withdrawals and objections to such nominations shall be filed with the election commissioners on or before five o'clock P. M. on the fourteenth day preceding the city election. All substitutions to fill vacancies caused by withdrawal or ineligibility shall be filed with the election commissioners on or before five o'clock on the twelfth day preceding the city election.

SECTION 57. The name of each person who is nominated in compliance with law, together with his residence and the title and term of the office for which he is a candidate shall be printed on the official ballots at the municipal election, and the names of no other candidates shall be printed thereon. The names of candidates for the same office shall be printed upon the official ballot in the order in which they may be drawn by the board of election commissioners, whose duty it shall be to make such drawing and to give each candidate an opportunity to be present thereat personally or by one representative.

SECTION 58.² No ballot used at any biennial or special municipal election shall have printed thereon any party or political designation or mark, and there shall not be appended to the name of

¹ The same qualifications for voting now apply to both women and men. *Acts of 1921, Chap. 65.*

² As amended by *Acts of 1924, Chap. 479.*

any candidate any such party or political designation or mark, or anything showing how he was nominated or indicating his views or opinions.

SECTION 59.¹ On ballots to be used at biennial or special municipal elections blank spaces shall be left at the end of each list of candidates for the different offices, equal to the number to be elected thereto, in which the voter may insert the name of any person not printed on the ballot for whom he desires to vote for such office.

SECTION 60. All laws not inconsistent with the provisions of this act, governing nomination papers and nominations for, and elections of municipal officers in the city of Boston, shall so far as they may be applicable, govern the nomination papers, nominations and elections provided for in this act. The board of election commissioners shall be subject to the same penalties and shall have the same powers and duties, where not inconsistent with the provisions of this act, in relation to nomination papers, preparing and printing ballots, preparing for and conducting elections and counting, tabulating and determining the votes cast under the provisions of this act, as they have now in relation to municipal elections in said city.

SECTION 61. The provisions of this act shall apply to any special municipal election held after the year nineteen hundred and nine in the city of Boston, except that nomination papers for offices to be filled at such elections shall be issued by the election commissioners on and after the day following the calling of said special election. Every special municipal election shall be held on a Tuesday not less than sixty days nor more than ninety days after the date of the order calling such special election.

SECTION 62. All acts and parts of acts so far as inconsistent with this act are hereby repealed; all ordinances and parts of ordinances so far as inconsistent with this act are hereby annulled; and all acts and parts of acts affecting the city of Boston not inconsistent with the provisions of this act are continued in force:
. . . .

80. The Iowa Commission Plan Statute of 1907.

The most important contribution of the so-called Des Moines Plan to municipal progress was its introduction, so far as this country is concerned, of the non-partisan pri-

¹ As amended by *Acts of 1924*, Chap. 479.

mary. This plan has been widely adopted in connection with the commission and manager plans of government. It has also extended into many other cities. A majority of the larger cities of the United States now conduct their elections on a non-partisan basis.

SOURCE—*Acts and Resolutions of the General Assembly of the State of Iowa, 1907, Chap. 48.*

SEC. 5. Candidates—how nominated—primary election—ballot—canvass of vote—result published—municipal election. Candidates to be voted for at all general municipal elections at which a mayor and four councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nomination shall be held on the second Monday preceding the general municipal election. The judges of election appointed for the general municipal election shall be the judges of the primary election, and it shall be held at the same place, so far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election. Any person desiring to become a candidate for mayor or councilman shall, at least ten days prior to said primary election, file with the said clerk a statement of such candidacy, in substantially the following form

STATE OF IOWA, }
 _____ COUNTY, } SS.

I (_____), being first duly sworn, say that I reside at street, city of county of state of Iowa; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the Monday of 19.. and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by.....
 on this day of 19..

(Signed).....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to the qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

PETITION ACCOMPANYING NOMINATING STATEMENT.

The undersigned, duly qualified electors of the city of and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the Monday of 19... We further state that we know him to be a qualified elector of said city and a man of good moral character and qualified in our judgment for the duties of such office.

Names of Qualified Electors	Number	Street

Immediately upon the expiration of the time of filing the statements and petitions for candidacies, the said city clerk shall cause to be published for three successive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballot, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for four." The ballots shall be printed upon plain, substantial white paper, and shall be headed:

CANDIDATES FOR NOMINATION FOR MAYOR AND COUNCILMEN OF CITY AT THE PRIMARY ELECTION.

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions.)

OFFICIAL PRIMARY BALLOT.

CANDIDATES FOR NOMINATION FOR MAYOR AND COUNCILMEN OF CITY AT THE PRIMARY ELECTION.

For Mayor

☐ (Name of candidate)
(Vote for one.)

For Councilman

☐ (Name of candidate)
(Vote for four.)

Official ballot attest
(Signature.)

.....
City Clerk.

Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling-place a number of said ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor. The persons who are qualified to vote at the general municipal election shall be qualified to vote at such primary election, and challenges can be made by not more than two persons, to be appointed at the time of opening the polls by the judges of election; and the law applicable to challenges at a general municipal election shall be applicable to challenges made at such primary election. Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, and make return thereof to the city clerk, upon proper blanks to be furnished by the said clerk, within

six hours of the closing of the polls. On the day following the said primary election, the said city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers of said city, at least once, the result thereof. Said canvass by the city clerk shall be publicly made. The two candidates receiving the highest number of votes for mayor shall be the candidates, and the only candidates, whose names shall be placed upon the ballot for mayor at the next succeeding general municipal election, and the eight candidates receiving the highest number of votes for councilman, or all such candidates if less than eight, shall be the candidates and the only candidates whose names shall be placed upon the ballot for councilman at such municipal election. All electors of cities under this act who by the laws governing cities of the first class and cities acting under special charter would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballot at such general municipal election shall be in the same general form as for such primary election, so far as applicable, and in all elections in such city the election precincts, voting places, method of conducting election, canvassing the votes and announcing the results, shall be the same as by law provided for election of officers in such cities, so far as the same are applicable and not inconsistent with the provisions of this act.

SEC. 5-A. Services for hire—penalty. Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars (\$300), or be imprisoned in the county jail not exceeding thirty (30) days.

SEC. 5-B. Bribery and illegal voting—penalty. Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person making false answer to any of the provisions of this act relative to his qualifications to vote at said election; any person wilfully voting or offering to vote at such election who has not been a resident of this state for six months next preceding said election, or who is not twenty-one years of age, or is not a citizen of the

United States; or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding or abetting any violation hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days.

81. Charter of Berkeley, California, 1909.

The election provisions of the Berkeley, California, charter of 1909 have often been used as a model. Their general effect is like that of the Iowa statute of 1907,¹ except that they provide that any candidate receiving an absolute majority of the votes cast at the first, or primary, election is thereupon elected. This was the system employed in elections for the German Reichstag prior to 1918. The framers of the Berkeley charter did not, however, consciously imitate German practice. The majority provision has been widely copied, but it is doubtful if there is any real advantage in it. It is likely to result in loss of interest in the second election.

SOURCE—*Charter of the City of Berkeley*, in effect 1909 (Published by the City, 1909), 11-19.

ARTICLE III.

ELECTIONS.

General and special municipal elections.

Sec. 4. A municipal election shall be held in the City on the first Saturday in May in the year 1909, and on the first Saturday in April in 1911 and on the first Saturday in April in every second year thereafter, and shall be known as the general municipal election. A second election shall be held, when necessary, as provided in subdivision 22 of section 5, on the third Saturday after said general municipal election, and shall be known as the second general municipal election.

¹ See § 80.

All other municipal elections that may be held by authority of this Charter or of general law shall be known as special municipal elections.

Nomination and election of city officers.

Sec. 5. (1) The mode of nomination and election of all elective officers of the City to be voted for at any municipal election shall be as follows and not otherwise:

Condition of candidacy.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth. . . .¹

Filing of petitions.

(11) If either the original or the amended petition of nomination be found sufficiently signed as hereinbefore provided, the Clerk shall file the same twenty-five days before the date of the election. When a petition of nomination shall have been filed by the Clerk it shall not be withdrawn nor added to and no signature shall be revoked thereafter.

Preservation of petitions.

(12) The City Clerk shall preserve in his office for a period of two years all petitions of nomination and all certificates belonging thereto filed under this section.

Election proclamation.

(13) Immediately after such petitions are filed, the Clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty days before the election certify such list as being the list of candidates nominated as required by the Charter of Berkeley, and the Council shall cause said certified list of names and the offices to be filled, designating whether for a full term or unexpired term, to be published in the proclamation calling the election at least ten successive days before the election in not more than two daily newspapers of general circulation published in the City of Berkeley. Said proclamation shall conform in all respects to the general State law governing the conduct of municipal elections, now or hereafter in force, except as above required.

¹ The paragraphs relating to the method of nomination are omitted.

Form of ballots.

(14) The City Clerk shall cause the ballots to be printed and bound and numbered as provided for by State law except as otherwise required in this Charter. The ballots shall contain the list of names and the respective offices, as published in the proclamation and shall be in substantially the following form :

General (or special) municipal election, City of Berkeley.

(Inserting date thereof.)

INSTRUCTIONS TO VOTERS: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the Inspector of Election, and obtain another.

Requirements of ballot.

(15) All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right hand side for charter amendments or other questions to be voted upon at the municipal elections, as provided for under this Charter. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

Every nominee to be on ballot.

(16) The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided, shall be omitted from the ballot.

Arrangement of offices on ballot.

(17) The offices to be filled shall be arranged in separate columns in the following order :

“For Mayor (if any) vote for one.”

“For Auditor (if any) vote for one.”

“For Councilman (if any) vote for (giving number).”

“For School Directors (if any) vote for (giving number).”

Space for voting cross.

(18) Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

Blank spaces for additional candidates.

(19) Half-inch spaces shall be left below the printed names of candidates for each office equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

Sample Ballots.

(20) The Clerk shall cause to be printed sample ballots identical with the ballot to be used at the election and shall furnish copies of the same on application to registered voters at his office at least five days before the date fixed for such election, and shall mail one such ballot to each voter entitled to vote at such election, so that all of said sample ballots shall have been mailed at least three whole days before said election.

Vote necessary for election.

(21) In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office shall be declared elected; in case there are two or more persons to be elected to an office, as that of Councilman or School Director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected; provided, however, that no person shall be declared elected to any office at such first election unless the number of votes received by him shall be greater than one-half the number of ballots cast at such election.

Second Election.

(22) If at any election held as above provided there be any office to which the required number of persons was not elected, then as to such office the said first election shall be considered to have been a primary election for the nomination of candidates, and a second election shall be held to fill said office. The candidates not elected at such first election, equal in number to twice the number to be elected to any given office, or less if so there be, who receive the highest number of votes for the respective offices at such first election, shall be the only candidates at such second election, provided, that if there be any person who, under the provisions of

this subdivision, would have been entitled to become a candidate for any office except for the fact that some other candidate received an equal number of votes therefor, then all such persons receiving such equal number of votes shall likewise become candidates for such office.

The candidates equal in number to the persons to be elected who shall receive the highest number of votes at such second election shall be declared elected to such office.

Date of second election.

(23) The said second election, if necessary to be held, shall be held three weeks after the first election.

Rules governing second election.

(24) All the provisions and conditions above set forth as to the conduct of an election, so far as they may be applicable, shall govern the second election, except that notice of election need be published twice only, and provided also that the same precincts and polling places shall, if possible, be used.

Failure of person elected to qualify.

(25) If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

Informalities in election.

(26) No informalities on conducting municipal elections shall invalidate the same, if they have been conducted fairly and in substantial conformity to the requirements of this Charter.

General election regulations.

Sec. 6. (1) The provisions of the State law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of elections, so far as they may be applicable, shall govern all municipal elections, provided that the Council shall meet as a canvassing board and duly canvass the election returns within four days after any municipal election.

Voting machines.

(2) In case voting machines shall be used at municipal elections, the Council shall have power, by ordinance, to modify the provisions of Section 5 so far as may be necessary to adapt them to the use of voting machines.

82. Preferential Voting in the San Francisco Charter.

In order to avoid the necessity of two elections and still provide for something approximating a majority choice, a number of cities have made use of preferential voting. The following sections of the San Francisco charter furnish an example of provisions establishing the preferential method of election.

The preferential ballot has not been used in San Francisco since 1921, due to the introduction, in accordance with Section 14 of the charter as amended, of voting machines which were unable to carry preferential ballots.¹ Nevertheless, the San Francisco provisions illustrate the general principles involved.

SOURCE—San Francisco, *Charter of the City and County of San Francisco*, as amended in 1903, 1907, 1911, 1913, 1915, 1917, 1919, 1921, 1923 and 1925 (Published by the Board of Supervisors, 1925). This charter was adopted in 1898 and became effective in 1900.

ARTICLE XI.

DEPARTMENT OF ELECTIONS.

CHAPTER II.

MUNICIPAL ELECTIONS.

Printing of Ballots.

SEC. 10. The Registrar of Voters shall cause the ballots to be printed and bound and numbered as provided for by State law, except as otherwise required in this Chapter. The ballots shall contain the list of names and the respective offices, as set forth in the proclamation, and shall be substantially as hereinafter provided.

Heading and Directions to Voters.

(a) General (or recall, as the case may be) municipal election, City and County of San Francisco.

INSTRUCTIONS TO VOTERS: To vote for any candidate stamp a cross (X) in one of the squares to the right of the candidate's name.

¹ In *Ashe v. Zemansky* (192 California, 83, 1923), the Supreme Court of California ruled that the amendment permitting the use of voting machines practically repealed the preferential provisions of the charter.

Vote your first choices in the first column, your second choices in the second column, your third choices in the third column.

Vote FIRST CHOICE for as many candidates as there are offices to be filled.

Vote SECOND CHOICE, if any, for the same number.

Vote THIRD CHOICE, if any, for the same number.

DO NOT VOTE MORE THAN ONE CHOICE FOR ANY ONE CANDIDATE.

To vote for a person whose name is not on the ballot, write name of such person in the blank space provided for such purpose.

If you wrongly mark, tear or deface this ballot, return it to the inspector of elections and obtain another.

Arrangements of Offices on the Ballot.

(b) The offices to be filled shall be arranged in the following order:

The Mayor, Police Judges, District Attorney, City Attorney, Assessor, Auditor, County Clerk, Sheriff, Treasurer, Tax Collector, Recorder, Public Administrator, Coroner, arranged in one or more columns, and the Supervisors in a column or columns separate from the others.

Every Nominee on Ballot.

(c) The name of every candidate who has been duly and regularly nominated shall be placed on the ballot under the title of the office for which he is a candidate; provided, that a candidate whose nomination has been completed, may, not less than thirty days before a municipal election and not less than twenty-five days before a recall election, withdraw as a candidate by filing with the Registrar of Voters, his withdrawal, naming the office; such withdrawal must be signed and sworn to by the person withdrawing, and no withdrawal at any later date shall be of any force or effect.

Rotation of Candidates' Names.

SEC. 11. The ballots for the Assembly district of the City and County designated by the lowest number shall have the names of each group of candidates for an office or offices arranged in alphabetical order, according to the family name of the candidate. In the Assembly district designated by the next higher number the groups of names shall be the same as in the district designated by the next lower number, save that the last candidate in the group in the preceding district shall be placed at the beginning of

the group, the succession of names to be otherwise unchanged, and so on, rotating the names in this order throughout all the Assembly districts.

In the event that the number of candidates in any group shall exceed the number of Assembly districts in the City or County, then the total number of candidates in such group shall be divided by the number of Assembly districts and the quotient, if an integral number, or if fractional, then the next higher integral number shall be the number of candidates to be taken from the end and placed at the beginning of such a group in each successive Assembly district; the rotation then being in this manner, to-wit: if there be fifty-six candidates for Supervisors and twenty Assembly districts, numbered from twenty-five to forty-four, the fifty-fourth, fifty-fifth and fifty-sixth candidates in the group of the twenty-fifth district will be the first, second and third candidates, respectively, in the group of the twenty-sixth district.

Spaces for Name and for Voting Cross.

SEC. 12. (a) The candidate's name shall be printed in 8-point Roman capital type and shall be enclosed by lines above and below, three-eighths inch apart. Three three-eighths inch squares shall be provided at the right of the name of each candidate, wherein the voter may stamp a cross for that candidate as his first, second, or third choice, and at the top of each column of candidates the three columns of squares shall be designated "First Choice," "Second Choice" and "Third Choice" respectively.

Blank Spaces for Additional Candidates.

(b) Three-eighths inch spaces shall be left below the printed names of candidates for each office equal in number to the number to be elected, wherein the voter may write the name of any person or persons for whom he may wish to vote.

Other Requirements of Ballot.

SEC. 13. All ballots shall be precisely of the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible in each Assembly district to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column or columns may be provided on the right hand side for Charter amendments or other questions to be voted upon at the municipal elections, as provided for under the Charter.

Voting Machines.

SEC. 14. In the event of the use of voting machines the arrangement of the ballot, the counting of the vote, the canvass of returns and the determination of the result shall be governed by the general laws of the State.¹

No Party Designation.

SEC. 15. No party name or political designation or descriptive matter concerning the candidate shall appear on the ballot.

. . . .

Canvass of Returns and Determination of Results of Election.

SEC. 19. (a) Said votes shall be counted in a place open to the public, and the boards counting the same shall enter the total number thereof on the tally sheets provided therefor. They then shall count and enter the number of the first, second and third choice votes for each candidate on said tally sheet and make returns thereof to the Board of Election Commissioners as herein required. The canvass must be public, in the presence of bystanders and must be continuous, without adjournment, until completed and the result thereof is declared. Any candidate shall be entitled to a representative among the bystanders.

The provisions of this Chapter relating to counting the ballots shall not apply to a special municipal election at which a proposition or propositions, or question or questions, only is, or are, voted upon; but the ballots at all such special elections shall be counted at the respective polling places and returned by the precinct election boards under the laws applicable to such elections.

(b) If a ballot contain more than one vote for the same candidate, only the one of such votes highest in rank shall be counted. If a ballot contain either first or second or third choice votes for any office in excess of the number of places to be filled for such office no vote for that office in the column showing such excess shall be counted.

(c) Paragraph (b) of this section shall be printed conspicuously on the tally sheet.

(d) Candidates receiving a majority of the first choice votes for any office shall be elected. If the full number of candidates to be elected do not receive such a majority of the first choice votes for such office, a canvass shall then be made of the second choice

¹ As amended Nov. 7, 1922; approved by the Legislature, January 18, 1923.

votes received by those candidates for said office who are not elected by first choice votes; said second choice votes shall be added to the first choice votes received by such candidates and candidates who by such addition shall receive a majority shall be elected.

(e) If by the count of either first choice votes or first and second choice votes, as above provided, more candidates than there are offices to be filled shall receive a majority, the candidate or candidates equal in number to the number of offices to be filled having the highest vote shall be elected.

(f) If the full number of candidates to be elected do not receive a majority by adding first and second choice votes, as above directed, a canvass shall then be made of the third choice votes received by those candidates for said office who are not elected, either by first choice votes or by adding first and second choice votes. Said third choice votes shall be added to the first and second choice votes received by such candidates, and the candidates, equal in number to the number of offices remaining to be filled, who receive the highest number of votes by said addition shall be elected.

(g) The above subdivisions (d), (e) and (f) shall be applied and carried out in the making of the official canvass and the declaration of the official result.¹

Ties.

SEC. 20. A tie between two or more candidates shall be decided in favor of the one having the highest number of first choice votes. If they are also equal in that respect then the highest number of second choice votes shall determine the result. If this does not decide, then the tie shall be determined by lot, under the direction of the Board of Election Commissioners.

Majority Defined.

SEC. 21. A majority vote for any candidate for an office where but one is to be elected shall be deemed to be more than one-half of the total number of first choice votes cast for all candidates for such office.

A majority vote for a candidate for an office where a group is to be elected shall be more than one-half of the number secured by dividing the total of first choice votes cast for all candidates for such office by the number of places to be filled.

¹ As amended November 5, 1918; approved by the Legislature January 17, 1919 (*Statutes*, 1919).

Failure of Persons Elected to Qualify.

SEC. 22. If a person elected fails to qualify, the office shall be filled as in this Charter provided for a vacancy in such office.

Informalities of Election.

SEC. 23. No informalities in conducting municipal elections shall invalidate elections if they have been conducted fairly and in substantial conformity to the requirements of this Charter.

Salary of Registrar.

SEC. 24. From and after the first day of July, 1917, the annual salary of the Registrar of Voters shall be fixed by resolution of the Board of Election Commissioners of the City and County of San Francisco. Any provision of this Charter contrary to or inconsistent with the provisions of this section is hereby repealed.

"Entire Vote"—How computed.

SEC. 25. After the election of a Mayor for a full term at an election held under and pursuant to the provisions of this Chapter, the words "entire vote for all candidates for the office of Mayor" as used in the initiative Chapter III of Article XI of this Charter and the words "entire vote cast for Mayor" as used in the referendum Chapter IV of Article XI of this Charter and as used in the recall Chapter V of Article XI of this Charter, shall in each respective case where such words are so used be deemed to mean the total of first choice votes cast for all candidates for Mayor for a full term at an election held under this Chapter.

83. The Preferential Ballot in San Francisco.

A copy of the ballot used in San Francisco prior to the introduction of voting machines, reproduced on the two following pages, illustrates the arrangement of the ballot under the preferential system.

SOURCE—Ballot used at the last preferential election held in San Francisco, 1921.

84. Preferential Voting Held Unconstitutional in Minnesota, 1915.

At the municipal election in April, 1915, a candidate named Windom received a plurality, but not a majority, of

first-choice votes for the office of municipal judge. Another candidate, W. H. Smallwood, received so many second- and third-choice votes that he was declared elected. John Brown, Jr., an elector of Duluth, brought a suit to contest the election.

SOURCE—Brown *v.* Smallwood, 130 *Minnesota*, 492 (1915).

DIBELL, C. At the general municipal election held in Duluth on the first Tuesday of April, 1915, the contestee, W. H. Smallwood, was a candidate for the office of municipal judge, and was declared elected by the city council. The contestant, John Brown, Jr., is an elector of Duluth, entitled to contest the election. On the hearing of the contest there were findings and judgment for the contestee. The contestant appeals from the judgment.

There are two questions:

• • •

MARK CROSSES (X) ON BALLOT ONLY WITH RUBBER STAMP;

NEVER WITH PEN OR PENCIL

(Fold Ballot to this Line, leaving Top Margin exposed)

GENERAL MUNICIPAL ELECTION CITY AND COUNTY OF SAN FRANCISCO 21st ASSEMBLY DISTRICT

INSTRUCTIONS TO VOTERS:

To vote for any candidate stamp a cross (X) in one of the squares to the right of the candidate's name. Vote your first choice in the first column, your second choice in the second column, your third choice in the third column.

Vote FIRST CHOICE for as many candidates as there are offices to be filled.

Vote SECOND CHOICE, if any, for the same number.

Vote THIRD CHOICE, if any, for the same number.

DO NOT VOTE MORE THAN ONE CHOICE FOR ANY ONE CANDIDATE. To vote against a member of the Board of Education stamp a cross (X) in the square to the right of the word "No."

To vote against confirmation stamp a cross (X) in the square to the right of the word "No." To vote for a person, whose name is not on the ballot, write name of such person in the blank space provided for such purpose.

If you wrongly mark, tear or deface this ballot, return it to the inspector of elections and obtain another.

POLICE JUDGES	Those to be Elected	First Choice	Second Choice	Third Choice
THOMAS P. CONLON				
SYLVAIN J. LAZARUS				
EDMOND H. LOMASNEY				
DANIEL S. O'BRIEN				
ERNEST B. D. SPAGNOLI				
CITY ATTORNEY	One to be Elected			
GEORGE AULL				
TREASURER	One to be Elected			
JOHN E. McDUGGALL				
TAX COLLECTOR	One to be Elected			
EDWARD F. BRYANT				
SUPERVISORS	Nine to be Elected	First Choice	Second Choice	Third Choice
CHARLES F. ADAMS				
THOMAS J. CODE				
LOUIS H. COSPER				
WILLIAM E. COSTLEY				
A. BATHURST CRANE				
WILLISTON W. DAVIS				
CORNELIUS DEASY				
ALBERT J. DOLLINGER				
F. R. DRINKHOUSE				
NEIL T. DUFFY				
THOMAS F. FEELEY				
A. L. FREEMAN				
JOSEPH GALLAGHER				
MRS. E. C. HARRINGTON				
FRANK H. HARRIS				
EDWARD P. HEALY				
FRED L. HILMER				
JAMES KAVANAUGH				
PHILIP L. KELLER				

2. The next question is whether the preferential system of voting, for which provision is made in the Duluth charter, is constitutional.

The general scheme of the preferential system is this:

All candidates go upon the official ballot by petition. The ballot provides for first choice, second choice and additional choice votes. If the result of the first choice is a majority for a candidate, he is elected. If a count of the first choice votes brings no majority, the second choice votes are added to the first choice votes, and if a candidate then has a majority of the first and second choice votes, he is elected. If there is not a majority, the first and second choice votes are added to the additional choice votes, and the candidate having a plurality is elected. Each voter may vote as many additional choice votes as he chooses, less the first and second choice votes; that is, he may vote as many additional choice votes as there are candidates, less two. In this case, there were four candidates, each voter had two additional

[illegible]

votes, or a total of four votes. No voter can vote more than one vote for any one candidate. He is not required to vote a second choice or additional choices.

...

The following tabulation shows the result of the election of municipal judge.

	First Choice.	Second Choice.	1st & 2d Choice.	Add'l Choice.	1st, 2d & Add'l Choice.
Louisell.	992	734	1,726	402	2,128
Norton.	3,417	1,501	4,918	167	5,085
Smallwood.	3,496	2,845	6,341	240	6,581
Windom.	4,408	604	5,012	54	5,066
Totals.	12,313	5,684	17,997	863	18,860

There was no majority of first choice votes. There was no majority of first and second choice votes. There was of course a plurality of first choice, second choice, and additional choice, votes.

The Constitution provides as follows:

“Every male person of the age of twenty-one years or upwards, * * * shall be entitled to vote at such election * * * for all officers that now are, or hereafter may be, elective by the people.” Const. art. 7, § 1. . . .

When the Constitution was framed, and as used in it, the word “vote” meant a choice for a candidate by one constitutionally qualified to exercise a choice. Since then it has meant nothing else. It was never meant that the ballot of one elector, cast for one candidate, could be of greater or less effect than the ballot of another elector cast for another candidate. It was to be of the same effect. It was never thought that with four candidates one elector could vote for the candidate of his choice, and another elector could vote for three candidates against him. The preferential system directly diminishes the right of an elector to give an effective vote for the candidate of his choice. If he votes for him once, his power to help him is exhausted. If he votes for other candidates he may harm his choice, but cannot help him. Another elector may vote for three candidates opposed to him. The mathematical possibilities of the application of the system to different situations are infinite.

...

The quotations made from the different cases are not chance expressions. They are indicative of the idea, which permeates all

legal thought, that when a voter votes for the candidate of his choice, his vote must be counted one, and it cannot be defeated or its effect lessened, except by the vote of another elector voting for one. A qualified voter has the constitutional right to record one vote for the candidate of his choice, and have it counted one. This right is not infringed by giving the same right to another qualified voter opposed to him. It is infringed if such other voter is permitted to vote for three opposing candidates.

We know of but two cases involving the preferential system. One is *State v. Portland*, 65 Or. 273, 133 Pac. 62. The Constitution of Oregon distinctly authorizes such system, and it is of course valid. The other is *Orpen v. Watson* (N. J.) 93 Atl. 853. The court there reached a conclusion directly opposed to our views. We have given it full consideration. It does not accord with our views, and we do not follow it.

....

HALLAM, J. (dissenting in part). I dissent from the second proposition stated in the opinion.

The constitutional question is, does this system of preferential voting violate the constitutional guaranty of a right "to vote" at an election "for all officers * * * elective by the people"? Const. art. 7. § 1. The question is a new one in this state.

....

The guaranty of the Constitution of this state that every male person a citizen of the United States "shall be entitled to vote" at an election "for all officers * * * elective by the people," had at the time of its adoption only one meaning. At the time the Constitution was adopted there was restricted suffrage in many states. In some there were racial disqualifications, and in others property and educational qualifications. My opinion is that the framers had in mind only the matter of defining what persons should be entitled to vote. The debaters in both constitutional conventions make this clear. They intended to guarantee to the persons named in the Constitution the right to vote, and the same right to vote as every other elector. Methods of voting never entered their minds, and they never supposed they were prohibiting any method of election which did not deny equality of right among voters. The provisions should be so construed as to give effect to their purpose. Whatever the Duluth charter does do, it does not infringe on the right to vote. Every citizen has the same right as every other citizen. The thought running through all the decisions

is that the right to vote is a political privilege which the Legislature may regulate to any extent not prohibited by the state or federal Constitution.

....

Under our system of government, where every voter has a right to run for office, and where the number of candidates is often large, it is not practicable or wise to settle the right to office by a single ballot of first choice votes and to give a certificate of election to the candidate receiving the highest number of first choice votes. Even the highest may sometimes receive but a small fraction of the total vote. The common method of elimination is now by means of a primary election. The people of Duluth proposed to dispense with the machinery of an extra primary election and to accomplish the same result by permitting an expression of second and additional choice votes all at once. Without regard to the merits of their plan, it appears to me that the plan was within their constitutional power to adopt. No voter has a constitutional right to say that his candidate shall be declared elected without a majority of first choice votes, and if such candidate receives less, the voter who supports him has no constitutional right to say that the election shall be void and no further expression of the electorate shall be received. In my opinion the voters of Duluth did not, by the adoption of their charter, infringe upon their "own" right "to vote."

....

85. Compulsory Voting Unconstitutional in Missouri, 1896.

One of the most notable facts concerning American municipal democracy is the small proportion of electors who vote in municipal elections. A remedy often suggested is that of compulsory voting. The only attempt actually made to put pressure upon citizens to vote was the provision of a Kansas City charter for a poll tax of \$2.50, which was to be remitted to all persons who voted at the general city election. The supreme court of Missouri, in the case of *Kansas City v. Whipple*, held this provision unconstitutional.

SOURCE—*Kansas City v. Whipple*, *Appellant*, 136 *Missouri*, 475 (1896).

....

BRACE, C. J.—By section 39 of article 17 of the charter of Kansas City it is provided that:

“Every male person over the age of twenty-one years who shall be a resident of Kansas City shall be assessed for each year in which a general election is held a poll tax of two dollars and fifty cents, which shall be collected and paid in the same manner as any other personal tax; provided, however, that if the person so assessed shall vote at the general city election held in the year for which such tax is levied, and shall receive a certificate from the recorder of votes that he has voted at such election, or shall otherwise establish in such manner as may be provided by ordinance that he has so voted, such certificate or proof shall operate to extinguish such tax for such year; but a failure to pay such tax shall not disqualify any person from voting. The first assessment of such poll tax shall be made for the year 1890. All moneys collected under this section shall be used for sanitary purposes.”

This is an appeal from a judgment of the circuit court of Jackson county, in favor of plaintiff, against the defendant, for the amount of the tax provided for in this section, and for which he is liable under its provisions, if the section is a valid law, in which case the judgment should be affirmed, and this is the only question raised upon the record herein.

.....
2. The section in question is an apt illustration of the manner in which such a principle of selection may be used for the purpose of punishment, under the guise of a tax for “public purposes,” for no one can read this charter provision as a whole without coming to the conclusion that its purpose is to impose a penalty upon the voters of Kansas City for not voting rather than for the purpose of raising revenue to maintain a necessary function of the city government. In fact the greater part of the argument of the learned counsel for the respondent is directed to the maintenance of the proposition that, to require a citizen to vote, under penalty, is a legitimate exercise of legislative authority in this state.

In support of this proposition our attention has been called to the important character of the high trust committed to the voter, and the necessity of its discharge to the public welfare, and hence a duty to vote is deduced, upon the part of all those on whom the right is conferred which it is argued ought to be enforced by compulsory legislation. In support of this argument we are cited to the views expressed by John Stuart Mill in his work on Repre-

sentative Government, by Hon. Benjamin Butler, late governor of Massachusetts, and by Senator Hill, late governor of New York, respectively, in their messages to the general assembly of those states, to the views expressed by Frederick William Holls in *Annals of the American Academy of Political and Social Science* for April, 1891, and by the learned judge who tried this case below, in his opinion printed in the brief of counsel for respondent.

The whole force of the argument in these interesting and instructive papers is spent in the concession that by them the exercise of the elective franchise is established to be a duty, as well as a right or privilege—a concession which for the purpose of this case, may be made, and yet the main proposition remain unestablished, i.e., that it is such a duty as may be enforced by compulsory legislation.

The law is not always what it ought to be according to the views of many learned, thoughtful and experienced publicists. It is not every duty which a citizen in a republican government may owe to his fellow citizens, and to his government, that he can be constrained to perform. For the performance of many of these duties reliance must be placed only on the enlightened conscience of intelligent and patriotic freemen. For it is never to be forgotten that while the citizens of this great republic are the *subjects* of government, whose duties as such may be enforced by the sovereign will, as expressed in the law of the land, they are also its sovereign,—a sovereign, it is true, having but a single sovereign power—the *power of the ballot*—by the exercise of which, however, all other governmental powers and duties are created, and to which they are subordinate, and in the exercise of which alone does the citizen find his prerogative of sovereignty in the normal operations of a representative republican government.

It detracts nothing from the dignity and character of this power that in this state, under its organic law, the power is limited to a certain class of its citizens, and the mode and manner of its exercise in pursuance thereof is regulated by law. The power is a sovereign power, and in the exercise of it the citizen who possesses it acts as a sovereign; and, standing in the relation of a sovereign to such power, he must have the supreme and independent right of a sovereign to exercise it or not, else it ceases to be a sovereign right.

That it is not within the power of any legislative authority, national or state, to compel the citizen to exercise this sovereign

right, seems to have been the common understanding of our people from the beginning of our national existence, for, notwithstanding the diligent research of counsel for respondent, and our own investigations in that direction, no other legislative enactment of the character of the one in hand has been, nor do we believe can be, found. The municipality of Kansas City in this enactment seems to have been the pioneer and sole adventurer into this field of legislation in this country, since the revolution. The only precedents for it, to which we have been cited, are to be found in the legislation of some of the colonies at periods when they derived their legislative authority from the crown and parliament of England. The rights of the citizens of those colonies were *then* simply those of subjects, *their duty* to obey the sovereign mandates in the exercise of the elective franchise, the same as in all other matters—a condition so intolerable to our forefathers that they thought the sacrifices of a war of seven years not too great a price to pay for emancipation from its thralldom, and for the proud privilege of becoming sovereigns of a government of their own creation, of which, at the same time, they became the willing subjects.

Such legislation, having for its source monarchical power, can not be invoked as a precedent for legislation in a government created to perpetuate the principle of popular sovereignty. It subverts the principle, and eliminates from our form of government the idea of sovereignty of the citizen, for as said before if suffrage is a sovereign right of the citizen, he must be as free, according to the dictates of his own untrammelled will and conscience, not to exercise it, as to exercise it on any particular occasion; otherwise the right is not sovereign.

As no precedent for such legislation can be found in the history of the government, of course no adjudicated case can be found directly supporting it, but we are cited to a class of cases in which it is held that a citizen elected to a public office may be compelled to qualify therefor and enter upon the discharge of its duties; which, it is contended, does by way of analogy support it.

It is seen at once, however, that the analogy fails when we consider that the duty of a citizen elected by the sovereign will to an office created by the sovereign power, is the duty of a subject, while the duty in question here is the duty of the sovereign himself. Of like character with the former is also the duty of the citizen

when he is called on to bear arms, serve on juries, etc. By no such duties as these can the duty of a citizen as an elector be measured.

The right of suffrage is the basis upon which the whole superstructure of our government rests. The right to exercise it when once conferred must be supreme and independent, and the offices of the departments of government created by it must be confined to providing ways and means simply for its orderly exercise. In our organic law it is conferred upon a certain class of the citizens of the state and the way and mode of its exercise in an orderly manner provided for. Art. 8, Const. of Mo. Farther control than this over the right, neither this nor any other state of the Union has, so far as we are advised, ever attempted to go. On the contrary, in the spirit of the construction we have placed upon this right, our organic act in another article declares that, "no power, civil or military, shall at any time interfere to prevent the *free* exercise of the right of suffrage." Art. 2, sec. 9, Const. of Mo. How can a citizen be said to enjoy *the free* exercise of the right of suffrage who is constrained to such exercise, whether he will or not, by a penalty?

In whatever light we view this charter provision, whether as imposing a tax upon each male resident of Kansas City over the age of twenty-one years who don't vote whether he can or not, or as a penalty imposed upon those that don't vote who can, it is obnoxious to the provisions of the organic law which secures to every citizen protection against partial and discriminative taxation, and against invasion of his sovereign right of suffrage, and must be held to be void and of no effect. . . .

86. Compulsory Voting Authorized by Massachusetts Constitution, 1918.

The Massachusetts constitutional convention of 1917-18 recommended an amendment to the constitution authorizing the legislature to provide for compulsory voting; and the amendment was adopted by the voters. A similar provision appears in the constitution of North Dakota.

SOURCE—*Constitution of the State of Massachusetts* (Published by the Secretary of the Commonwealth, Boston, 1923), 64.

Art. LXI.¹ The general court shall have authority to provide for compulsory voting at elections, but the right of secret voting shall be preserved.

¹ This article was proposed by the constitutional convention of 1918, and was adopted at an election held Nov. 5, 1918.

PART X

PROPORTIONAL REPRESENTATION

87. Proportional Representation in the Cleveland Charter, 1923.

Proportional representation, it is contended, makes possible a more equitable representation in the city legislature. It attempts to give each body of opinion in the community representation in the city council in proportion to its voting strength. The only method of proportional representation which has been employed in the United States is the so-called Hare plan, sometimes called the single transferable vote plan. The provision for proportional representation in the Cleveland charter illustrates the customary form of the Hare plan.

SOURCE—*Charter of the City of Cleveland* (Published by the city, November, 1923), 41-45.

Ballots.

Section 161. Ballots used in electing members of the City Council shall be without party mark or designation, and shall be marked by the electors according to the instructions printed thereon under the heading "Directions to Voters," as specified in this section. Except that the names of candidates shall appear in the spaces indicated therefor and that the spaces left for the number of the district and date of the election shall be filed with such number and date, the ballots shall be in form substantially as follows:

REGULAR CITY ELECTION

District

November 19, . .

Directions to Voters

Put the figure 1 opposite the name of your first choice. If you want to express also a second, third and other choices, do so by putting the figure 2 opposite the name of your second choice, the figure 3

opposite the name of your third choice, and so on. In this way you may express as many choices as you please. The more choices you express, the surer you are to make your ballot count for one of the candidates you favor.

This ballot will not be counted for your second choice, unless it is found that it cannot help your first choice; it will not be counted for your third choice unless it is found that it cannot help either your first or second, etc.

A ballot is spoiled if the figure 1 is put opposite more than one name. If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots, and get another one from him.

.....

Rotation of Names.

Section 162. The names of candidates for the Council shall be printed on the ballots in rotation as follows:

The ballots for each district shall be printed in as many series as there are candidates for the Council for such district. The whole number of ballots to be printed for the district shall be divided by the number of series and the quotient so obtained shall be the number of ballots printed in each series. In printing the first series of ballots the names of candidates shall be arranged in the alphabetical order of their surnames. After printing the first series the first name shall be placed last and the next series printed, and this process shall be repeated until each name shall have been printed first in one series. The ballots so printed shall be combined in tablets to be supplied to the various voting places. Each tablet shall contain substantially the same number of ballots from each series, and, so far as practicable, the ballots shall be combined in such manner that two or more from the same series shall not be together in a tablet.

Blank Space on Ballots.

Section 163. A blank space shall be left on the ballots below the printed names of the candidates. In any such space an elector may write the name of any person eligible to the Council, and votes cast for such persons shall be counted as though for candidates whose names are printed on the ballots.

Rules for Counting Ballots.

Section 164. Ballots cast for the election of members of the Council shall be counted and the results determined by the election authorities according to the following rules:

(a) On all ballots a cross shall be considered equivalent to the figure 1. So far as may be consistent with the general election laws, every ballot from which the first choice of the voter can be clearly ascertained shall be considered valid.

(b) The ballots shall first be sorted and counted at the several voting precincts according to the first choices of the voters. At each voting precinct the ballots cast for each candidate as first choice shall be put up in a separate package, which shall be properly marked on the outside to show the number of ballots therein and the name of the candidate for whom they were cast. The ballots declared invalid by the precinct officials shall also be put up in a separate package, properly marked on the outside. All the packages of each precinct, together with a record of the precinct count, shall be promptly forwarded to the central election authorities as directed by them, and the counting of the ballots cast in each district shall thereafter be carried on by a central counting board for each district, appointed by the central election authorities and acting under their direction.

(c) After the review of the precinct count of its district by the central district counting board, and the correction of any errors discovered therein, the first choice votes of each candidate shall be added and tabulated. This completes the first count.

(d) The whole number of valid ballots cast in the district shall then be divided by a number greater by one than the number of seats to be filled in the district. The next whole number larger than the resulting quotient is the quota or constituency that suffices to elect a member.

(e) All candidates the number of whose votes on the first count equals or exceeds the quota shall then be declared elected.

(f) All votes obtained by any candidate in excess of the quota shall be termed his surplus.

(g) Any surplus there may be shall next be transferred, the largest surplus first, then the next largest, and so on, according to the following rules.

(h) In the transfers of a surplus, transferable ballots up to the number of votes in the surplus shall be transferred to the continuing candidates marked on them as next choices, in accordance with rule (m). The particular ballots to be taken for transfer as the surplus of a candidate shall be obtained by taking as nearly an equal number of ballots as possible from the transferable ballots that have been cast for him in each of the voting precincts. All

such surplus ballots shall be taken as they happen to come without selection.

(i) "Transferable ballots" means ballots from which the next choice of the voter for some continuing candidate can be clearly ascertained. A "continuing candidate" is a candidate as yet neither elected nor defeated.

(j) Whenever a ballot is transferred from one candidate to another, it shall be tallied or otherwise recorded by a tally clerk assigned to the candidate to whom it is being transferred. Each tally clerk shall take care not to receive for his candidate by transfer more ballots than are required to complete the quota.

(k) The votes standing to the credit of each candidate shall be added and a tabulation of results made whenever a comparison of the votes of the several candidates is necessary to determine the next step in the procedure. Each tabulation, together with the transfers of ballots made since the preceding tabulation, is referred to in this section as a "count."

(l) After the transfer of all surpluses (or after the first count if no candidate received a surplus) every candidate who has no votes to his credit shall be declared defeated. Thereupon the candidate lowest on the poll as it then stands shall be declared defeated and all his transferable ballots transferred to continuing candidates, each ballot being transferred to the credit of that continuing candidate next preferred by the voter in accordance with rule (m). Thereupon the candidate then lowest shall be declared defeated and all his transferable ballots transferred in the same way. Thus the lowest candidates shall be declared defeated one after another and their transferable ballots transferred to continuing candidates.

(m) Whenever in the transfer of a surplus or of the ballots of a defeated candidate the vote of any candidate becomes equal to the quota, he shall immediately be declared elected and no further transfer to him shall be made.

(n) When candidates to the number of seats to be filled have received a quota and have therefore been declared elected, all other candidates shall be declared defeated and the election shall be at an end; or when the number of continuing candidates is reduced to the number of seats still to be filled, those candidates shall be declared elected whether they have received the full quota or not and the election shall be at an end.

(o) If when a candidate is to be declared defeated two or

more candidates at the bottom of the poll have the same number of votes, that one of the tied candidates shall first be declared defeated who was credited with the fewest votes at the end of the count next preceding, and any further tie shall be decided on the same principle. Any tie not otherwise provided for in this section shall be decided by lot.

(p) In the transfer of the ballots of any candidate who has received ballots by transfer, those ballots shall be transferred first which he received by the count next preceding, and the rest shall be transferred in the reverse order of the counts by which he received them.

(q) On each tabulation a record shall be kept, under the designation "ineffective ballots," of those ballots which no longer stand to the credit of any elected or continuing candidate and which are not transferable.

(r) Every ballot which is transferred from one candidate to another shall be stamped or marked so that its entire course from candidate to candidate throughout the counting can be conveniently traced.

(s) The ballots shall be preserved by the election authorities until the end of the term for which the members of the Council are being elected.

(t) Any re-count of the ballots shall be made by the central election authorities in accordance with this section except that the reference to voting precincts may be disregarded. In any re-count every ballot shall be made to take the same course that it took in the original counting, unless there is discovered a mistake that required its taking a different course. In such case any required changes shall be made in the course taken by the ballot. These principles shall apply also to the correction of any error that may be discovered during the original counting.

(u) The candidates or their agents, representatives of the press, and, so far as may be consistent with good order and with convenience in the counting and transferring of the ballots, the public shall be afforded every facility for being present and witnessing these operations.

(v) The Council shall have power to provide for the use of mechanical or other devices for marking and sorting the ballots and tabulating the results, and to modify the form of the ballot, the directions to voters, and the details in respect to the method of counting and transferring ballots accordingly; provided, however,

that no change shall be made which will alter the principles of the voting or of the counting.

88. A Proportional Representation Ballot, Cleveland, 1925.

The ballot under the Hare plan (shown on page 452) is very simple. The names of the candidates are arranged in alphabetical order in a single column with spaces at the left in which the voter indicates his choice. The order of names is varied from ballot to ballot by printing the name which appears last on one ballot at the head of the column in the next, and so on through the entire list of names. The ballots, thus varied, are numbered consecutively and bound into tablets.¹

SOURCE—Ballot form used at the Cleveland City election, November 3, 1925.

89. General Result Record, Cleveland Proportional Representation Election, 1925.

The tally sheet on pages 454-455 illustrates the method of computing the result of a proportional representation election. In this instance, only one of the candidates, Sulzmann, was elected on the first count, and not until the fifteenth count did the next successful candidate, Marshall, secure the required quota. The proportional representation sections of the Cleveland charter ² should be read in connection with the examination of the tally sheet.

SOURCE—*General Result Record*, District 4, Election of Councilmen, Cleveland, November 3, 1925.

90. Proportional Representation Unconstitutional in California, 1922.

The constitutionality of proportional representation, under constitutional provisions guaranteeing qualified electors the right to vote at all elections, has been variously interpreted in several states. Both Michigan and Cali-

¹ See Section 162 of the charter of Cleveland in the preceding chapter.

² To be found in § 87.

fornia have held proportional representation unconstitutional. This position is illustrated by the opinion of the District Court of Appeals of the third district of California, in *People ex rel Devine v. Elkus*. The supreme court of the state subsequently refused a rehearing in the case.

SOURCE—The *People ex rel Devine v. Elkus*, 59 *California Appellate Reports*, 396 (1922), 211 *Pacific Reporter*, 34.

...

FINCH, P. J. As the result of an election held on the 3d day of May, 1921, the defendants were declared elected members of the city council of the city of Sacramento. They entered upon the discharge of their duties as such and have continuously thereafter acted as such city council. This suit was instituted to oust them from office on the ground that the charter provisions under which they were elected are unconstitutional. The defendants' demurrer to the complaint was sustained, and, the plaintiff declining to amend, judgment was entered for the defendants. . . .

The complicated system of counting the votes and ascertaining the result of the election under the Hare system, as provided by the charter, is substantially set forth in detail in *Wattles v. Upjohn*, 211 Mich. 514 [179 N. W. 335], and need not be here repeated. For the purposes of this opinion it is sufficient to say that, though nine members of the city council were to be elected at large, no ballot could be or was counted for more than one

Consecutive No 7

Name of Voter

Residence

Name or Registered Number of Voter

CLEVELAND

REGULAR CITY ELECTION

District 4

November 3, 1925

DIRECTIONS TO VOTERS

Put the figure 1 opposite the name of your first choice. If you want to express also second, third and other choices, do so by putting the figure 2 opposite the name of your second choice, the figure 3 opposite the name of your third choice, and so on. In this way you may express as many choices as you desire. If you desire to express the surest you are to make your ballot count for one of the candidates you favor.

This ballot will not be counted for your second choice, unless it is found that it cannot help your first choice; it will not be counted for your third choice unless it is found that it cannot help either your first or your second, etc.

The ballot is spoiled if the figure 1 is put opposite more than one name. If you spoil this ballot, tear it across once, return to the election officer in charge of the ballots, and get another one from him.

COUNCILMANIC TICKET

FIELDER SANDERS

GEORGE T. STALLEY

JOHN M. SULZMANN

HENRY C. WALTHER

EARL H. WELLS

GENERAL RESULT RECORD

REGULAR MUNICIPAL ELECTION FOR CITY COUNCILMEN ELECTED NOVEMBER 3, 1923, IN THE CITY OF CLEVELAND, OHIO

DISTRICT 4

No. to be elected 7 Quora 3820	1st Count	2nd Count		3rd Count		4th Count		5th Count		6th Count		7th Count		8th Count		9th Count		10th Count	
		Transfer of Sulzmann	Result	Transfer of Gordon	Result	Transfer of Rausch	Result	Transfer of Walther	Result	Transfer of Linnert	Result	Transfer of Goldsmith	Result	Transfer of Gilbert	Result	Transfer of Phillips	Result	Transfer of Stalley	Result
De MATORBUS.....	2065	24	2089	2	2091	3	2094	2	2096	5	2101	2	2103	0	2103	3	2103	6	2112
FORCE.....	1716	19	1735	3	1738	1	1739	4	1743	21	1764	2	1766	4	1770	6	1776	12	1788
FOSTER.....	707	4	711	1	712	1	713	1	714	12	726	0	726	5	731	8	739	9	748
GEORGE.....	1339	0	1339	0	1339	0	1339	1	1340	1	1341	0	1341	1	1342	0	1342	0	1342
GILBERT.....	1878	5	1883	0	1883	0	1883	0	1883	2	1885	1	1886	186	186	7	2044	12	2056
GOLDMAN.....	1873	44	1917	8	1925	8	1933	27	1960	18	1978	43	2021	16	2037	7	2044	12	2056
GOLDSMITH.....	159	1	160	0	160	2	162	0	162	1	163	163	163	16	2037	7	2044	12	2056
GORDON.....	62	0	62	62	62	2	162	0	162	1	163	163	163	16	2037	7	2044	12	2056
GREEN.....	1989	51	2040	6	2046	12	2058	7	2065	8	2073	24	2097	35	2132	10	2142	17	2159
HATTON.....	3439	56	3495	5	3500	12	3502	2	3504	6	3510	11	3521	21	3542	10	3548	10	3548
HERTZ.....	1067	10	1077	0	1077	1	1078	0	1078	13	1081	13	1094	7	1101	1	1102	4	1106
LINNERT.....	153	1	154	1	155	1	155	1	156	156	156	156	156	13	3579	7	3586	8	3594
MARSHALL.....	3456	72	3528	4	3532	6	3538	4	3542	12	3554	12	3566	13	3579	7	3586	8	3594
MURPHY.....	490	60	550	1	551	3	554	0	554	1	555	0	555	6	561	9	570	9	579
PHILLIPS.....	180	13	193	0	193	0	193	2	195	1	196	1	197	1	198	198	198	22	2911
POTTER.....	2449	323	2772	1	2773	0	2773	5	2778	19	2797	15	2812	24	2836	53	2889	22	2911
RAUSCH.....	78	0	78	78	78	78	78	78	78	78	78	78	78	9	1207	26	1233	10	1243
RODWAY.....	1128	52	1180	2	1182	7	1189	4	1193	3	1196	2	1198	9	1207	26	1233	10	1243
SANDERS.....	1574	109	1683	9	1692	10	1702	23	1725	11	1736	27	1763	20	1783	55	1838	25	1863
STALLEY.....	214	2	216	0	216	3	219	0	219	0	219	1	220	1	221	3	224	224	224
SULZMAN.....	865	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820	3820
WALSH.....	93	4	97	1	98	3	101	101	101	4	101	0	696	3	699	1	700	16	716
WELLS.....	685	5	690	0	690	0	690	2	692	4	696	0	696	3	699	1	700	16	716
WHEELER.....	539	3	542	2	544	2	546	4	550	1	551	3	554	2	556	0	556	7	563
WINSTON.....	233	7	240	0	240	3	243	0	243	1	244	0	244	2	246	0	246	3	249
Scattering Ineffective Ballots.....	4	0	4	4	20	11	31	12	43	26	69	6	75	16	91	3	94	54	148
TOTALS.....	30555	865	30555	66	30555	78	30555	101	30555	156	30555	163	30555	186	30555	198	30555	224	30555

therefor as it would be in the election of state or county officers. . . .

In *Wattles v. Upjohn*, 211 Mich. 514 [179 N. W. 335], the Hare system of voting, substantially as provided in the Sacramento charter, is declared unconstitutional. The court said:

"The Hare system limits his (the voter's) power to express his preference 'in this manner' to but one candidate of the seven, only permitting him to express a second choice for one other, and so on by numerically dwindling and weakening choices until the elector has expressed thus 'as may choices as you (he) please.' As said in the *Maynard* Case, 'it is not in the power of the Legislature (nor a city adopting a charter under the Home Rule Act) to give his preference or choice, without conflicting with these provisions of the Constitution, more than a single expression of opinion or choice'; and he has the right to express that single choice as to each of the officers to be elected in his district. While each voter can under the Hare system vote for all candidates to express sequential choices as provided, it is evident that his vote is primarily and positively effective for only one candidate."

At the oral argument, counsel for respondents filed a type-written copy of the decision of the court of appeals of the eighth district of Ohio, rendered May 6, 1922, in the case of *Reutener v. City of Cleveland*, upholding the Hare system as embodied in the Cleveland charter. . . .

The decision thus seems to be based upon the proposition that the chartered cities of Ohio are given the right of local self-government in the broadest sense. The foregoing authorities uniformly sustain the declaration found in section 212 of McCrary on Elections, fourth edition, "that minority representation and cumulative voting can be provided for only by constitutional provision." . . .

It would have been competent to provide in the charter for the division of the city into nine districts and the election of one member of the council from each district. Had that been done, no elector would have had a right to vote for more than one candidate to represent him. The Hare system cannot, however, be upheld on the theory that, in legal effect, it divides the electorate into as many districts or constituencies as there are offices to be filled, "based on common opinion instead of arbitrary geographical lines," and that "every man's ballot is counted for one man who is his representative among the candidates on the legislative

body," which would be all he could do were the city divided into nine districts, and "that therefore it cannot be said his right of elective franchise has been abridged." In *Wattles v. Upjohn*, *supra*, from which the foregoing quotations are made, the court said:

"Counsel very interestingly discusses the advantages of that theoretical method of distributing constituencies by boundary lines of opinion, belief or policy, but, however alluring in theory, such intangible, undefined theoretical demarcation by similar thought or views is not a legal substitute for what is in law recognized to be a voting constituency or geographically defined representation district, as the right of franchise has become established under our Constitution."

. . . .

91. Proportional Representation Constitutional in Ohio, 1923.

The Ohio supreme court has upheld the constitutionality of proportional representation, relying chiefly upon the very broad home rule powers granted to cities by the constitutional amendments of 1912.

SOURCE—*Reutener v. Cleveland*, 107 *Ohio State*, 117 (1923).

Error to the Court of Appeals of Cuyahoga county.

On July 1, 1913, the city of Cleveland, under the home-rule amendment to the Ohio Constitution adopted in 1912, enacted a charter for local self-government, under which the city has since continued to operate.

At the election, in November, 1921, a proposal to amend the charter in certain particulars was submitted to the people of the city of Cleveland, and was approved by a majority vote.

In the instant case, Reutener, a taxpayer, seeks to enjoin the defendants in error, the city of Cleveland and Fred Kohler, mayor of Cleveland, from putting into effect such amendment, on the ground that it violates the provisions of the state constitution, both in the manner of its adoption and in its purpose and tenor.¹ . . .

¹The provisions of the amended charter said to be invalid were Sections 161-164. These sections of the charter will be found as § 87.

The facts are more fully stated in the opinion.

The lower courts sustained the validity of the amendment.

ALLEN, J. The plaintiff in error challenges the amendment enacted in the election of November, 1921, as a part of the home-rule charter of the city of Cleveland, on two grounds:

1. That the amendment was adopted in violation of the terms of the Ohio constitution.

2. That the proportional representation provision of the amendment is invalid because it violates Section 1, Article V, of the Ohio Constitution; that this provision is inseparable from the rest of the amendment, and therefore the amendment as a whole falls to the ground. . . .

The majority of the court being of the opinion that the method of adopting the amendment in question was valid, it now remains to inquire whether the system of voting set up in the amendment, known as the Hare System of Proportional Representation, conflicts with the constitution of Ohio.

Plaintiff in error claims that the proportional representation feature of the amendment contravenes Section 1, Article V of the Constitution of Ohio. This section of the constitution reads:

“Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be *entitled to vote at all elections.*”

By the terms of the amendment here questioned the city of Cleveland is divided into four districts. The old wards are abolished, and the council is to consist of twenty-five members elected from the four districts, each of which is to choose not less than five nor more than nine council members. The districts and the number of councilmen from each are designated, subject to future change by the council. Candidates for council are nominated by petition, no elector being permitted to sign the nominating petition of more than one candidate. The candidates' names are printed on the ballot, and the elector then votes by placing the figure '1' opposite the name of his first choice, the figure '2' opposite the name of his second choice, and so on down the list, putting consecutive numerals beside the name of as many candidates as he pleases. The ballot contains these words: “The more choices you express, the surer you are to make your ballot

count for one of the candidates you favor." When the polls close the ballots are counted, all the first choice ballots for the respective candidates being put into separate packages. The whole number of valid ballots is then counted and divided by a number greater by one than the whole number of seats to be filled in the district. The next whole number larger than the existing quotient is called the quota, and any candidate receiving first choice votes equalling or exceeding the quota is declared elected. If a candidate has more such votes than the quota, the surplus is taken at random from among his ballots and distributed among candidates having fewer first choice votes than the quota, according to the expressed second choice. Likewise on each count, the lowest candidate is declared defeated, and his ballots are distributed among the so-called continuing candidates.

Plaintiff in error claims that under this system, an elector residing in a district represented by from five to nine councilmen, no matter how many preferences he expresses when he casts his ballot, has his ballot counted for but one councilman; that he is permitted to vote for but one candidate.

The court does not consider that this contention is established upon the facts. The ballot is counted every time that it is considered as adding one to or subtracting one from a group of votes. It is true that the vote may become effective in electing only one candidate, and in this sense possibly it may be "counted for only one councilman."

However, plaintiff in error can hardly contend that a voting system which may at times deprive a ballot of its full effect is necessarily unconstitutional.

That the effect of a vote is often nullified in our elections is axiomatic. It is a matter of common knowledge that national officials have been elected by an actual minority. John Quincy Adams, for instance, received fewer popular votes than Andrew Jackson in the election of 1824. The popular vote for Jackson was 155,872; for Adams 105,321 (*Cyclopedia of American Government*, Volume III, page 11). That is to say votes of a plurality of electors are not always counted so as to be effective in national elections. It is also a matter of common knowledge, that, through the gerrymander, districts may be so defined as to be practically deprived of the effectiveness of their votes in elections; that is, a majority may be so districted as to become a minority, without power of electing its candidates.

The vote of an elector, therefore, under our present form of state and national government, may be shorn of its effect so far as the actual election of the elector's candidate is concerned, without invalidating the method of election.

This fact certainly is established, however, that under the Hare system, the voter is permitted to vote only one first choice vote, although at least five, and possibly nine, candidates are to be elected from his district.

The question then narrows itself down to this: Does the fact that the elector under this system votes a first choice for one officer only, there being from five to nine to be elected in the district, violate the provision of Section 1, Article V of the Constitution, that every elector shall be entitled to vote *at all* elections?

On the face meaning of this section the Hare System of Proportional Representation does not violate the Ohio constitution, for the elector is not prevented from voting *at any election*. He is entitled to vote at every municipal election, even though his vote may be effective in the election of fewer than the full number of candidates, and he has exactly the same voting power and right as every other elector.

The plaintiff in error, however, claims that *State, ex rel., v. Constantine*, 42 Ohio St., 437, is an authority binding upon this court in his favor. The second and third propositions of the syllabus in the *Constantine* case are:

"2. Where an office is filled by an election, the election must conform to the requirements of the constitution, and each elector of the district is entitled to vote for a candidate for each office to be filled at the election.

"3. A statute authorizing the election of four members of the police board at the same election, but which denies to an elector the right to vote for more than two members is in conflict with article V of the constitution."

This case is certainly an authority against the position of the defendant in error. The slight circumstance that limited voting was condemned in the *Constantine* case, while it is proportional representation that is here attacked, does not greatly differentiate the cases.

State, ex rel., v. Constantine, however, extended the plain language of the constitution far beyond the word-meaning of the provision in Section 1, Article V. To the clause shall "be entitled to vote at all elections," the *Constantine* case added the clause, and

"for a candidate for each office to be filled at the election." Moreover, that case was decided before the home-rule provision of the Ohio constitution was enacted. Since then a whole new body of law has developed in regard to Ohio city government—a body of law giving to cities the widest possible latitude in the formation of their local governments and in the performance of local governmental functions, limited only by provisions of the state constitution.

In 1912 the people of Ohio gave to municipalities all powers of local self-government, Sections 3 and 7, Article XVIII Ohio Constitution. Under these provisions this court has held that a system of preferential voting in a chartered municipality is valid (*Fitzgerald v. Cleveland*, 88 Ohio St., 338); that the provisions as to civil service in the charter of a city, if they comply with the state constitution, discontinue the general law on the subject as to that municipality (*State, ex rel. Lentz et al., Civil Service Commission v. Edwards*, 90 Ohio St., 305); and that women can by home-rule charter be made voters in local affairs, contrary to the provision of Section 1, Article V (*State, ex rel. Taylor v. French*, 96 Ohio St., 172).

To hold valid this system of voting adopted by the people of Cleveland is merely to carry out the plain meaning of the constitutional provision that municipalities shall have all powers of local self-government, and to give effect to the power which rightly takes precedence over all statutes and court decisions, the will of the people, as expressed in the organic law.

Electoral provisions similar to these have lately been upheld in other states.

In the case of *Commonwealth, ex rel. McCormick, Atty. Genl., v. Reeder*, 171 Pa. St., 505, the supreme court of Pennsylvania held constitutional an act providing for the election of a given number of judges, notwithstanding the fact that an elector was not allowed to vote for as many persons as there were places to be filled. See also *State v. Monahan*, 72 Kans., 492, 115 Am. St. Rep., 224, wherein the supreme court of Kansas upheld a legislative act which provided a property qualification for electors desiring to vote for directors of a drainage district, notwithstanding a constitutional provision against such qualification so far as electors generally were concerned.

Counsel for plaintiff in error cite to the court the case of *Wattles, ex rel. Johnson, v. Upjohn*, 211 Mich., 514, a recent case,

which held that under the home-rule act of Michigan the provisions of the Kalamazoo charter, providing substantially for the use of the Hare System of Proportional Representation, violated the Michigan constitution. The plaintiff in that action, which was a *quo warranto* proceeding, attacked the proportional representation feature of the charter upon the specific ground that the elector, under the Hare voting system, would be deprived of his right to vote for every office to be filled.

The provisions of the constitution of Michigan applicable to the question of voting are as follows:

"In all elections every male inhabitant * * * [defining the qualifications of voters] shall be an elector entitled to vote." Also, "No city or village shall have power to abridge the right of elective franchise."

It is conceded that if the constitution of Ohio were the same as that of Michigan this *Upjohn case* would be a direct authority against the validity of the proportional representation feature of the Cleveland amendment. But the constitutions of Ohio and Michigan upon this point are very different. The Ohio document contains a home-rule provision which grants cities all powers, that is, unlimited power, of self-government. The Michigan constitution contains no such broad provision.

Its so-called home-rule section is as follows:

"Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the Constitution and general laws of the state." (Section 21, Article VIII.)

This fact then distinguishes the two cases. In Ohio, charter cities have all powers of local self-government; and in Michigan, their powers of local self-government are limited.

The *Upjohn case*, therefore, is not an authority against this holding. Upon the same ground we also distinguish *In Re Opinion of Judges*, 41 Atl. Rep. (R. I.), 1009. That case arose under a section of the Rhode Island constitution, which specifically provides that "each elector shall be entitled to vote in the election of all civil officers," a wording which necessarily compelled the opinion rendered. Furthermore, the Rhode Island case did not

arise under an unlimited grant of power of local self-government. The same distinction also applies in every case cited by counsel for plaintiff in error as supporting his contention.

Since it is the opinion of a majority of the court that the Hare System of Proportional Representation outlined in the amendment is valid under the unlimited powers of local self-government given to charter cities in the Ohio constitution, it is unnecessary in the instant case to decide whether that feature of the amendment is separable from the sections embodying the rest of the proposal.

After all, is not the purpose of the home-rule amendment to the constitution exactly this, that progress in municipalities shall be not hampered by uniformity of action; that communities acting in local self-government may work out their own political destiny, and their own political freedom, on their own initiative, and in their own way; and with this purpose in mind, should not the enactment of political alterations in the structure and substance of a charter government be given every possible presumption of validity? There is a presumption that the enacted statute is valid. (*County of Miami v. City of Dayton*, 92 Ohio St., 215.) Not less should there be a presumption that changes enacted according to law in the organic constitution of a home-rule city are valid. For these and the reasons heretofore given the judgment is affirmed.

Judgment affirmed.

MARSHALL, C. J., WANAMAKER, MATTHIAS and DAY, J. J., concur.

JONES, J., concurring. Section 1, Article V, of the Constitution, explicitly pertains to and controls the *qualifications of electors at all elections*; but it does not attempt to control the *mode* of elections, nor the personnel of municipal officials. These are features of "local self-government" committed to chartered municipalities. As to other municipalities, *State, ex rel., v. Constantine*, 42 Ohio St., 437, has not been overruled and its principles still apply.

ROBINSON, J., dissenting. The pronouncement of the majority of the court in this case does not change the interpretation of Section I, Article V of the Ohio Constitution, enunciated in *State, ex rel., v. Constantine*, 42 Ohio St., 437, that "Each elector of the district is entitled to vote for a candidate for each office to be filled at the election," but declares that section inapplicable to chartered cities by reason of the provision of Section 3, Article

XVIII of the Constitution, that "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws." Since it cannot be denied that these two sections may be construed together so as to give force and effect to each, the effect of the decision is to declare Section 3, Article XVIII, paramount to Section 1, Article V. If paramount to Section 1, Article V, the same process of reasoning would make it paramount to all other provisions of the Ohio constitution. The pronouncement carried to its logical conclusion is: The inhabitants of a chartered city, as between such inhabitants and the local government, have no constitutional rights.

I do not believe that the electors of the whole state have the power to vote the constitutional guarantees away from the people of a portion of the state, nor do I believe they have consciously undertaken to do so.

In my opinion if the sustaining of the charter of the city of Cleveland requires the surrendering by its inhabitants, as between them and the local government, of all of their constitutional rights, it is sustained at too great a cost to them. Therefore, I dissent from the reasoning, the pronouncement of law, and the judgment.

92. Proportional Representation in Berlin, 1920.

Although the Hare plan of proportional representation is the only one which has been adopted in this country, on the continent of Europe, where hundreds of cities make use of the proportional system, equally unanimous use has been made of some form of list system. The essential fact of the list systems is that the elector votes for a list of candidates, usually nominated by a political party. Seats are distributed among the lists in proportion to the number of votes cast. In the system in force in Greater Berlin, the seats to which each list is entitled are distributed to the candidates of the list in the order in which their names appear on the ballot. This order is determined by the party management.

SOURCE—Gesetz über die Bildung der neuen Stadtgemeinde Berlin, enacted by the Prussian Landesversammlung, April 27, 1920.

8.

The municipal assembly consists of 225 members.

9.

(1) Election districts shall be organized for the election of municipal deputies.¹ The election of municipal deputies in Berlin shall follow the general regulations governing the election of municipal deputies, subject to the following provisions:

1. (1) In addition to the nominations for individual election districts (district nominations),² nominations may be made for the entire city (city nominations).³
- (2) District nominations must be signed by at least one hundred qualified electors of the election district, the city nominations by at least two hundred qualified electors of the city.
- (3) District nominations must contain a statement specifying the city nomination to which the votes disregarded in the distribution of seats in the municipal assembly shall be assigned. (See below, 2 (1).)
- (4) If the voter wishes to cast his vote for the corresponding city nomination at the same time, the ballot must bear a statement to this effect. Without such a statement the ballot may not be counted for a city nomination.
- (5) An alliance of nominations is to be permitted for city nominations only.
2. (1) To determine the result of the election the total number of valid ballots shall be divided by 225, thus fixing the election quotient. Every district nomination shall be allotted as many seats in the municipal assembly as the number of times that the total of votes cast for it can be divided by the election quotient. The remaining votes and the votes of a district nomination, for which less votes than the election quotient were cast, shall be counted toward the corresponding city nomination, insofar as this is permissible in accordance with 1 (4), above.

¹ Stadtverordneten.

² Kreiswahlvorschläge.

³ Stadtwahlvorschläge.

- (2) Those seats in the municipal assembly not disposed of by allotment among the district nominations shall be divided among the city nominations, in accordance with the general principles of proportional representation applicable to elections of municipal deputies.
- (3) The number and the boundaries of the districts may be altered by joint resolution of the magistrate and the municipal assembly.

PART XI

INITIATIVE, REFERENDUM AND RECALL

93. Amendments to the Charter of Los Angeles, 1903.

The recall first appeared in American city government in amendments of 1903 to the Los Angeles charter. The provision was written by Dr. John R. Haynes. The same group of amendments provided for the initiative and referendum. The initiative and referendum had been developed at an earlier time in other systems of government, but the form given them in the Los Angeles amendments has been substantially followed by most other cities. Thus the Iowa commission government act of 1907 repeated the language of the Los Angeles charter relating to the initiative, referendum, and recall, without alteration.

SOURCE—*Statutes of California*, 1903 (Sacramento, 1903), 572-575.

Section 198a. *The Initiative.* Any proposed ordinance may be submitted to the council by a petition signed by registered electors of the city, equal in number to the percentages hereinafter required. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths, that the statements therein made are true, and that each signature to the paper appended is the genuine signature of the person whose name purports to be thereunto subscribed. Within ten days from the date of filing such petition the city clerk shall examine and from the great register ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the council shall allow him extra help for that purpose, and he shall attach to said petition his certificate showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten

days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be found to be sufficient, the clerk shall submit the same to the council, without delay.

If the petition accompanying the proposed ordinance be signed by electors equal in number to fifteen per cent of the entire vote cast for all candidates for mayor at the last preceding general election at which a mayor was elected, and contains a request that said ordinance be submitted forthwith to a vote of the people at a special election, then the council shall either:

(a) Pass said ordinance without alteration within twenty days after the attachment of the clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provisions of section one hundred and ninety-eight *b* of this charter); and if the ordinance shall be passed by the council, but shall be vetoed by the mayor, and on reconsideration shall fail of passage by the council, then, within five days after determination that said ordinance shall have so failed of final adoption, the council shall proceed to call a special election at which said ordinance, without alteration, shall be submitted to a vote of the people; or

(b) Forthwith after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall proceed to call a special election at which said ordinance, without alteration, shall be submitted to a vote of the people.

If the petition be signed by electors equal in number to at least five per cent but less than fifteen per cent of the entire vote cast for all candidates for mayor at the last preceding general election at which a mayor was elected, then such ordinance, without alteration, shall be submitted by the council to a vote of the people at the next general municipal election that shall occur at any time after thirty days from the date of the clerk's certificate of sufficiency attached to the petition accompanying such ordinance.

The ballots used when voting upon said proposed ordinance shall contain the words "For the ordinance" (stating the nature of the proposed ordinance) and "Against the ordinance" (stating general nature of the proposed ordinance). If a majority of the qualified electors voting on said proposed ordinance shall vote

in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people can not be repealed or amended, except by a vote of the people.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section; *provided*, that there shall not be held under this section of the charter more than one special election in any period of six months.

The council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition, so submitted, receive a majority of the votes cast thereon at such election, such ordinance shall be repealed or amended, accordingly. Whenever any ordinance or proposition is required by this charter to be submitted to the voters of the city, at any election, the city clerk shall cause the ordinance or proposition to be printed, and he shall inclose a printed copy thereof in an envelope with a sample ballot, and mail the same to each voter, at least ten days prior to the election, but the city council may order such ordinance or proposition to be printed in the official newspaper of the city and published in like manner as ordinances adopted by the council are required to be published, and may order that such publication shall take the place of the printing and mailing of the ordinance or proposition and of the sample ballot as first above provided.

Section 198b. *The Referendum.* No ordinance passed by the city council (except when otherwise required by the general laws of the state or by the provisions of this charter, respecting street improvements, and except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency, and is passed by a two-thirds vote of the council, but no grant of any franchise shall be construed to be an urgency measure, but all franchises shall be subject to the referendary vote herein provided), shall go into effect before thirty days from the time of its final passage and its approval by the mayor; and if during said thirty days a petition signed by electors of the city equal in number to at least seven per cent of the entire vote cast for all candidates for mayor at the last preceding general election at which a mayor was elected, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance, and

if the same is not entirely repealed, the council shall submit the ordinance as is provided in section one hundred and ninety-eight *a* of this charter, to the vote of the electors of the city, either at the next general election or at a special municipal election to be called for that purpose, and such ordinance shall not go into effect or become operative unless a majority of the qualified voters voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of said section one hundred and ninety-eight *a*, except as to the percentage of signers, and be examined and certified by the clerk in all respects as is therein provided.

That there be added to the charter a new section, to be known as section one hundred and ninety-eight *c*, and to read as follows:

Section 198c. *The Recall.* The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office, the incumbent of which is sought to be removed, cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk; *provided*, that the petition sent to the council shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths, that the statements therein made are true, and that each signature to the paper appended is the genuine signature of the person whose name purports to be thereunto subscribed. Within ten days from the date of the filing such petition the city clerk shall examine and from the great register ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the council shall allow him extra help for that purpose, and he shall attach to said petition his certificate showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of

the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be found to be sufficient the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient the city council shall order, and fix a date for holding, the said election, not less than thirty days nor more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The city council shall make or cause to be made publication of notice, and all arrangements for holding of such election; and the same shall be conducted, returned, and the result thereof declared, in all respects, as are other city elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and, unless he requests otherwise, in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receive the highest number of votes the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent receives the highest number of votes he shall continue in office. . . .

94. Municipal Initiative and Referendum in Oklahoma Constitution.

The constitutions of many of the states now guarantee the initiative and referendum to the people of cities. The Oklahoma constitution is an example of this practice.

SOURCE—*Constitution of the State of Oklahoma* (Oklahoma City, 1923), 85-86.

ARTICLE XVIII.

Initiative and Referendum.

Sec. 4. (a) The powers of the initiative and referendum, reserved by this Constitution to the people of the State and the re-

spective counties and districts therein, are hereby reserved to the people of every municipal corporation now existing or which shall hereafter be created within this State, with reference to all legislative authority which it may exercise, and amendments to charters for its own government in accordance with the provisions of this Constitution.

Sec. 4. (b) Every petition for either the initiative or referendum in the government of a municipal corporation shall be signed by a number of qualified electors residing within the territorial limits of such municipal corporation, equal to twenty-five per centum of the total number of votes cast at the next preceding election, and every such petition shall be filed with the chief executive officer of such municipal corporation.

Sec. 4. (c) When such petition demands the enactment of an ordinance or other legal act other than the grant, extension, or renewal of a franchise, the chief executive officer shall present the same to the legislative body of such corporation at its next meeting, and unless the said petition shall be granted more than thirty days before the next election at which any city officers are to be elected, the chief executive officer shall submit the said ordinance or act so petitioned for, to the qualified electors at said election; and if a majority of said electors voting thereon shall vote for the same, it shall thereupon become in full force and effect.

Sec. 4. (d) When such petition demands a referendum vote upon any ordinance or any other legal act other than the grant, extension, or renewal of a franchise, the chief executive officer shall submit said ordinance or act to the qualified electors of said corporation at the next succeeding general municipal election, and if, at said election, majority of the electors voting thereon shall not vote for the same, it shall thereupon stand repealed.

Sec. 4. (e) When such petition demands an amendment to a charter, the chief executive officer shall submit such amendment to the qualified electors of said municipal corporation at the next election of any officers of said corporation, and if, at said election, a majority of said electors voting thereon shall vote for such amendment, the same shall thereupon become an amendment to and a part of said charter, when approved by the Governor and filed in the same manner and form as an original charter is required by the provisions of this article to be approved and filed.

95. Direct Legislation in Detroit, 1917-1924.

Detroit is one of the cities in which the initiative and referendum have been used most extensively. The following list of the propositions voted upon from 1919 to 1924, inclusive, with the vote for and against each, is taken from a study of direct legislation made by the Detroit Bureau of Governmental Research.

SOURCE—*Public Business* (Published by the Detroit Bureau of Governmental Research). III, No. 15 (Whole No. 95, June 15, 1925), 237-239. The list was prepared by A. J. Koenig, of the Bureau of Government of the University of Michigan. The portion published here includes propositions 76 to 144, as numbered in *Public Business*.

Propositions Voted Upon in Detroit 1919 to 1924

(Bond issues marked "B," charter amendments marked "C. A.," ordinances, "Ord.," propositions submitted because of petition marked "Pet.," legislative acts requiring local approval marked "Leg.")

Election of April 7, 1919

		Yes	%	No	%
Ord.	Shall an ordinance be enacted providing for the renumbering of streets?	92,221	73.9	32,612	....
B.	Shall bonds be issued for parks and playgrounds, \$10,000,000? (3/5) ¹	74,740	89.5	43,993	....
B. C. A.	Shall State Act relative to tax payment extension be approved?.....	83,990	73.2	23,966	....
No. 3	Shall Council be authorized to erect a new Belle Isle Bridge, \$3,000,000? Defeated as No. 41, No. 44, and 67. ² Note: The destruction of old bridge by fire aided proposition.....	87,657	67.6	42,021	....
C. A. No. 4	Shall Council be authorized to submit propositions to electors?.....	74,446	72.8	27,817	....
C. A. No. 5	Shall net debt limit be restricted to 4% of valuation? Reapproval of No. 19.....	68,193	68.2	31,797	....
C. A. No. 6	Shall issuance of street railway bonds up to 2% of city's valuation be authorized? Reapproval of No. 18 (3/5).....	65,286	65.2	34,847	....
B.	Shall city purchase street railway as herein proposed? Different from No. 45, see No. 85 and No. 93 which passed (3/5).....	63,882	...	70,471	52.45
C. A.	Shall street railway purchases be autonomous? Passed as No. 98.....	60,283	...	64,232	51.6

Election of April 5, 1920

B.	Shall city purchase street railway as herein proposed? New proposition, see No. 45, No. 83, also No. 93 (amending) which passed. (3/5).....	88,585	63.6	50,776	....
Leg. C. A.	Do you approve the Municipal Court Act of the State Legislature? (Initiated by Detroit Citizens' League).....	106,081	77.6	30,588	....

Election of August 31, 1920

B. C. A. No. 7	Shall city issue water supply bonds, \$12,000,000? (3/5).....	55,468	81.6	12,498	....
B.	Shall membership of Board of Supervisors be increased as herein specified? Shall city issue public sewer bonds \$25,000,000? (3/5).....	43,638	69.2	19,468	....
C. A. No. 8	Shall city set up a Board of Rules for dealing with building codes?.....	53,827	81.5	12,197	....
C. A. No. 9	Shall city have a Recreation Commissioner? Amending No. 25.....	46,675	75.1	15,468	....
		41,741	67.7	19,936	....

¹"3/5" indicates requiring a three-fifths majority for adoption.

²These numbers refer to earlier referenda on the question.

Ord. Pet.	Election of November 2, 1920 (Initiated by Federation of Labor) Same intent as No. 72	Yes	%	No	%
		140,573	60.2	92,875	...
Election of April 4, 1921					
	Shall city purchase street railway as herein provided? Amending No. 85. See No. 45 which failed. Also alternative proposal of D. U. R. No. 97.				...
B.	Shall hospital bonds be issued, \$3,000,000? (3/5)	96,600	66.1	49,568	...
C. A. No. 11	Shall city establish plants for manufacture of construction materials?	90,352	71.1	36,770	...
C. A. No. 12	Shall time limit on bond sales be 3 years except on those voted which are to be without time limit?	90,600	74.9	30,329	...
Ord. Pet.	Shall street railway service at cost proposal be accepted? (Initiated by the D. U. R. as alternative to purchase proposal No. 93)	78,101	70.5	32,682	...
		56,673	...	92,060	63.6
Election of October 11, 1921					
C. A. No. 13	Shall street railway purchase be autonomous? Failed as No. 84.	37,799	68.2	17,606	...
C. A. No. 14	Shall trackless transportation be permitted to M. O.? Technically faulty, repassed as No. 106	35,515	59.0	24,693	...
Election of November 8, 1921					
C. A. No. 17	Shall taxes be paid in two installments? (See No. 111 correcting this).	56,707	54.8	46,715	...
Ord. Pet.	Shall city open Dix-High-Waterloo highway? (Initiated) Reapproved as No. 113	65,709	61.9	40,364	...
Ord. Pet.	Shall D. U. R. ouster ordinance be passed? (Initiated by Public Utilities League)	72,268	66.5	36,353	...
C. A. Pet.	Shall Council have twenty-four councilmen from 24 wards? (Initiated by East Side Civic Association)	33,990	...	67,878	66.53
C. A. No. 16	Shall public lighting commission be empowered to contract for public lighting?	70,806	74.5	24,213	...
C. A. No. 15	Shall nominating petitions be handled as herein provided? Amendment approved as No. 134.	50,648	57.6	37,310	...
C. A. No. 14	Shall trackless transportation be permitted to M. O.? No. 99 reapproved to correct technical faults	62,979	63.5	36,124	...
B.	Shall bonds be issued for construction of Veterans' Memorial Convention Hall, \$5,500,000? See No. 33	61,569	61.1	39,122	...
Election of April 17, 1922					
B.	Shall the herein street railway purchase contract be approved, \$4,000,000? Amending and providing funds for No. 93	55,654	61.0	12,174	...
C. A. No. 18	Shall delinquent tax sales be not published and time extended to two years?	59,848	88.4	7,861	...

			Yes	%	No	%
Election of September 12, 1922						
C. A. No. 19	Shall Council be authorized to accept property for city?	45,290	59.0	31,427	....
C. A. No. 20	Shall penalty for non-payment of taxes hold under 2 payment plan? Technical correction of No. 100.....	39,634	52.4	35,994	....
Ord Pet.	Shall street railway tracks be constructed on Belle Isle Bridge?.....	45,538	55.5	36,511	....
Ord.	Shall city open Dix-High-Waterloo Highway? Initiated by Wm. Donley. Reapproval of No. 101.....	50,468	62.3	30,550	....
	Shall city open the Dalzelle-Elizabeth-Crosstown Highway? See alternate proposal No. 101 and No. 113.....	30,397	...	48,491	60.50	
	Shall a zoological garden be established at River Rouge? See alternate proposal No. 128.....	22,989	...	55,805	70.90	
Election of November 7, 1922						
Ord.	Shall sites be acquired for aviation fields by Park Department?.....	67,073	69.4	29,551	....
	Shall Cross street be vacated and sold? (D. A. C.).....	61,494	66.8	30,549	....
	Shall interurban service be terminated in city?.....	34,567	...	65,496	65.50	
B.	Shall the cost of paving, etc., be removed from Street R. R.?.....	42,445	...	51,618	54.90	
	Shall city issue street railway bonds, \$5,000,000? (3/5) Defeated again as No. 123, passed as No. 126.....	47,377	50.5	46,445	....
Election of March 7, 1923						
C. A. No. 21	Shall a woman police deputy be appointed?.....	48,827	54.7	40,511	....
C. A. No. 22	Shall city retire and pension police as herein provided?.....	61,987	69.2	27,544	....
B.	Shall city issue street railway bonds \$5,000,000? (3/5) Not 60%, failed as No. 120, passed as No. 126.....	49,877	57.9	36,230	....
Ord.	Shall Mayor's salary be increased from \$8,000 to \$12,000? Note: Salary increased by Council ordinance June 17, 1924, raised to \$15,000.....	33,223	...	55,538	62.60	
Election of April 2, 1923						
C. A. No. 23	Shall city retire and pension municipal employees?.....	63,174	52.6	56,844	....
B.	Shall city issue street railway bonds, \$5,000,000? (3/5) Failed as No. 120 and No. 123.....	74,160	61.9	45,699	....
Pet.	Shall city issue lighting and power bonds for \$12,000,000? (3/5).....	74,026	63.2	43,065	....
	Shall city accept the zoological park gift and pledge maintenance? (Initiated by Detroit Zoological Society). Note No. 115.....	71,905	61.3	45,394	....
Election of November 6, 1923						
C. A. No. 24	Shall street railway deeds and contracts provision be amended as herein?.....	58,051	70.8	23,997	....
C. A. No. 25	Shall bond limit be raised to total 9% of assessed value? (3/5) Note: As permitted by amendment to Home Rule Act.....	49,428	61.4	31,068	....
C. A. No. 27 Leg.	Shall State Act relative to Recorder's Court Jury Commission be approved?.....	57,181	73.7	20,437	....
C. A. No. 26	Shall city construct, maintain and operate a subway.....	56,995	67.3	27,639	....
C. A. No. 28	Shall procedure of claims and accounts against the city be modified?.....	55,878	74.5	19,171	....
C. A. No. 29	Shall abuses in the circulation of nominating petitions be further guarded against? Amending No. 105.....	64,300	81.3	14,754	....

Election of April 7, 1924

C. A. No. 30	Shall police widows' pensions be raised?	Yes	%	No	%
C. A. No. 31	Shall fire widows' pensions be raised?	41,985	76.4	12,997	....
C. A.	Shall forced paving account be raised to \$2,500,000?	41,836	76.6	12,732	....
C. A.	Shall 6% interest instead of 4% be charged on special assessment pay- ments? Note No. 56 reduced interest from 7% to 4%	37,729	74.2	13,128	....
		28,519	59.8	19,156	....

Election of September 9, 1924

C. A.	Shall city establish and empower Rapid Transit Commission?	136,798	72.7	51,308	....
C. A.	Shall President and President Pro Tem of Council be provided?	128,380	76.1	40,361	....
C. A.	Shall Council have power of sale of city property up to certain limits? ..	108,311	66.1	55,448	....
C. A.	Shall city establish and empower Zoological Park Commission?	124,220	69.3	54,964	....
Ord.	Shall gas rates be fixed as arbitration provided?	97,565	52.8	87,103	....

Election of November 4, 1924

C. A.	Shall forced paving account be increased to \$3,000,000, exclusive of re- quested work? See No. 137	120,008	...	127,339	51.50
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PART XII

THE GOVERNMENT OF METROPOLITAN AREAS

96. Government of Metropolitan London.

The government of metropolitan communities is a subject of great present interest. Cities, in their development, have not kept within their political boundaries. The effort to maintain some adequate relation between governmental organization and economic and social facts has produced remarkable experiments. The simplest method of solving the problem is the creation of a consolidated city embracing the whole urban area. An attempt was made to do this for London in 1885 by the establishment of the Metropolitan Board of Works with limited powers which it might exercise in practically the entire built-up area surrounding the metropolis. The act of 1885 retained practically all existing units of local government. When, in 1888 the Administrative County of London was established, it was given the same boundaries as those of the Metropolitan Board of Works. These boundaries had already been far outrun by London's population. At the present time three million people live outside the boundaries of the Administrative County and within what may properly be called metropolitan London.

In 1922 a Royal Commission on London Government was appointed to inquire into the desirability of altering the existing institutions. The first witness to appear before it was M. L. Gwyer, solicitor of the Ministry of Health. He presented a statement concerning the various authorities in the London area which gives a succinct and comprehensive picture of the complication of the governmental problem in the metropolis of the British Empire.

SOURCE—Statement of M. L. Gwyer, solicitor to the Ministry of Health, in the *Minutes of Evidence Taken Before the Royal Commission on London Government* (London, 1922), Part I, 2-9, 15-18.

AUTHORITIES WITHIN THE ADMINISTRATIVE COUNTY OF LONDON.

4. Within the administrative County of London the following local and public authorities are to be found:—

The London County Council.

The City Corporation.

28 Metropolitan Borough Councils.

28 Boards of Guardians.

The Metropolitan Asylums Board.

26 Assessment Committees.

4 Boards of Managers of School Districts.

1 Board of Managers of a Sick Asylum District.

The County of London Insurance Committee, the London Old Age Pensions Committee and its Sub-Committees and the Central (Unemployed) Body also exercise certain statutory functions within the area.

The Metropolitan Water Board, the Port of London Authority, the Thames Conservancy Board and the Lee Conservancy Board are statutory bodies exercising very important functions within, or affecting, the administrative County of London, but also outside it, and it will be more convenient to deal with them under a separate heading.

THE LONDON COUNTY COUNCIL.

5. *Area*.—The area now comprised in the County of London proper formed before the Local Government Act, 1888, part of the counties of Middlesex, Surrey and Kent, and was by Section 40 of the Act severed from those counties and constituted a separate county for all non-administrative (principally judicial) purposes, by the name of the County of London. As explained above, the area over which the London County Council exercise jurisdiction is the whole administrative County of London, that is to say the County of London proper and the City of London.

6. *Constitution*.—The London County Council now consist of 124 Councillors and 20 Aldermen (Section 40 (4) of the Act of 1888 and para. (5) of the Sixth Schedule to the Representation of the People Act, 1918). Two (in the City four) Councillors are

elected for each Parliamentary Division in the administrative County by persons on the register of local government electors for the Division and hold office for three years. The 20 Aldermen are elected by the Councillors and hold office for six years, half their number retiring every three years. The qualifications of Councillors and Aldermen are the same as in the case of County Councillors and County Aldermen in the rest of England and Wales. A Chairman, Vice-Chairman and Deputy-Chairman of the Council are elected annually.

THE CITY OF LONDON CORPORATION.

7. *Area*.—The area of the City of London comprises all that area which was formerly within the jurisdiction of the Commissioners of Sewers for the City, that is to say, the area within the old City walls and certain districts without the walls (Metropolis Management Act, 1855, Section 250). Certain adjustments of the boundary in the vicinity of Smithfield Market have been made by Orders in Council under powers given by the London Government Act, 1899. The areas comprised in the Inner Temple and Middle Temple are deemed to be within the City of London.

8. *Constitution*.—The citizens and freemen of the City of London are a Corporation whose legal style is "The Mayor and Commonalty and Citizens of the City of London." The governing body of the City is the Court of Common Council, which consists of 206 Common Councillors elected annually on a restricted franchise, and 26 Aldermen elected for life for the 26 City wards, including a Lord Mayor elected annually by the Aldermen from among their own number who have filled the office of Sheriff. The 26 Aldermen by themselves also constitute the Court of Aldermen, which exercises certain administrative functions apart from the Court of Common Council, particularly with reference to the City Police Force. The Court of Common Hall consists of the Lord Mayor, the Aldermen, and the Liverymen of the City Companies who are freemen of the City in Common Hall assembled, and each year nominates the two Aldermen from whom the Court of Aldermen elect the Lord Mayor for the ensuing year, and also elect the City Sheriffs and certain other City officers.

METROPOLITAN BOROUGH COUNCILS.

9. *Areas*.—The London Government Act, 1899, divided so much of the administrative County of London as lies outside the

City into a number of Metropolitan Boroughs, of which there are 28, including the City of Westminster and the Royal Borough of Kensington. The areas of these Boroughs are set out in the Schedule to the Act, subject to boundary adjustments subsequently made by Orders in Council.

10. *Constitution*.—Each Metropolitan Borough Council consists of a Mayor and from 30 to 60 Councillors, elected for three years, and Aldermen to the number of one-sixth of the number of Councillors, co-opted by the Councillors for six years.

POWERS AND DUTIES OF THE LONDON COUNTY COUNCIL, THE CITY CORPORATION AND THE METROPOLITAN BOROUGH COUNCILS.

General.

11. The Local Government Act, 1888, which created the County Council, transferred to them (*a*) the administrative business of the Justices in Quarter Sessions or out of Sessions, within the area which under the Act became the new County of London, and (*b*) the powers and duties of the Metropolitan Board of Works. The more important powers and duties comprised under (*a*) were the making and levying of rates, the management of county buildings, works and property, music and dancing licences (with a saving for the jurisdiction of the Lord Chamberlain) and the licensing of race-courses within the administrative County and within ten miles of Charing Cross, the provision and maintenance of pauper lunatic asylums, the provision and maintenance of reformatories and industrial schools, bridges and roads repairable with bridges, the execution of the Acts relating to destructive insects, and weights and measures. The powers and duties under (*b*) comprise those relating to main drainage, new streets and street improvements, buildings and building lines, Thames bridges and embankments, parks and open spaces, tramways, fire protection, artisans' dwellings, public health and sanitation, contagious diseases of animals, and certain borrowing and lending powers.

12. The County Council have also, subject to certain exceptions, all the powers and duties of County Councils generally, together with numerous special powers given to them by particular Acts. In two important respects their powers are less than those of other County Councils: they have no control over main roads, or, directly or indirectly, over the police. The police in the ad-

ministrative County of London, exclusive of the City, are under the control of the Secretary of State; within the City there is a City Police Force under the control of the City Corporation.

13. The County Council have, under the Municipal Corporations Act, 1882, the power of making bye-laws for the good rule and government of the County of London. . . . They also make bye-laws in respect of numerous other matters under the powers given them for that purpose by various statutes.

14. The City Corporation derive their powers from their various charters and from a large number of Acts of Parliament. The Local Government Act, 1888, transferred to them such of the powers and duties of the Justices in Quarter Sessions and out of Sessions within the City as would, if the City were a quarter sessions borough with a population exceeding 10,000, be exercised by virtue of the Act or any other Act by the Council of the Borough. Other administrative powers and duties of the Justices were transferred to the County Council, as, for example, the granting of music and dancing licences in the City. By the City of London Sewers Act, 1897, the Commissioners of Sewers of the City of London ceased to exist, and their powers and duties have since that date been exercised by the Corporation.

15. The Corporation also have the power of making bye-laws under numerous statutes, and, generally speaking, it may be said that the bye-laws made by the County Council do not extend to the City of London, though there are important exceptions. By the City of London (Union of Parishes) Act, 1907, the Corporation are the overseers for the City.

16. The Metropolitan Borough Councils were created by the London Government Act, 1899. By this Act the elective vestries and district boards created by the Metropolis Management Act, 1855, ceased to exist, and their powers and duties were transferred to the Council of the Borough comprising the area within which those powers were exercised. The Act also transferred to them certain minor powers and duties of the County Council, and enabled the Minister of Health, on the application of the County Council and of a majority of Borough Councils, to make a Provisional Order transferring to all the Borough Councils any powers exercisable by the County Council and *vice versa*.

17. A Metropolitan Borough Council have the same power as the County Council of making bye-laws under the Municipal Corporations Act for the good rule and government of their area, but

such bye-laws must not conflict with any bye-laws made by the County Council. Other powers and duties have been given to Metropolitan Borough Councils by a variety of Statutes, but, generally speaking, it may be said that none of these powers are exercisable save in the area of the Borough. By Section 11 (1) of the London Government Act, 1899, each Borough Council are the overseers of every parish within the Borough.

18. The more important of the powers and duties of the County Council, the City Corporation and the Borough Councils may be grouped under the following heads:—

(a) *Education.*

19. Under the Education (London) Act, 1903, the County Council became the local education authority for the whole administrative County of London, exercising and performing their powers and duties for this purpose through their statutory Education Committee. They have all the powers and duties of a local education authority under the Education Acts, now consolidated in the Education Act, 1921. In the case of elementary schools situate in their area, each Metropolitan Borough Council, and in the City, the Corporation, appoint a certain proportion of the Managers both of provided and non-provided schools (Section 36 of the Act of 1921).

(b) *Public Health.*

20. The London County Council are the principal public health authority for the whole of the administrative County, though their powers in this respect are much restricted within the area of the City. Certain of the public health services of London are administered directly by the Council; others are administered by the Borough Councils and by the City Corporation. Over the administration of these services by the Borough Councils the London County Council exercise certain powers of supervision and control; but only to a very limited extent in the case of the City. The City Corporation and the Borough Councils are, generally speaking, the authorities for executing the Public Health (London) Act, 1891; but the bye-laws made by the County Council under that Act do not extend to the City.

21. Attention may particularly be drawn to the provisions of Sections 100 and 101 of the Public Health (London) Act, 1891.

Under the first of these Sections, where it is proved to the satisfaction of the County Council that a Borough Council have made default under the Act with respect to the removal of any nuisance, the institution of any proceeding, or the enforcement of any bye-law, the County Council may act in the place of the Borough Council and recover from the Borough Council any expenses which they may incur in so doing; under the second, the County Council may complain to the Minister of Health of any default on the part of a Metropolitan Borough Council, and the Minister may thereupon make an Order limiting the time within which the default is to be remedied, and may, if action is not taken within the time so limited, appoint the County Council to act in the place of the Borough Council in default. In the latter case, the County Council are invested with all the powers of the defaulting authority and may levy a rate or (with the consent of the Minister) raise a loan for the purpose of defraying any expenses which they may incur. In the case of default by the City Corporation, the Minister of Health may himself exercise the powers exercisable by the County Council in the case of default by a Borough Council (Section 135).

22. The Act of 1888 empowers the County Council to appoint one or more Medical Officers of Health for their area. By sections 106 and 107 of the Public Health (London) Act, 1891, the City Corporation and every Borough Council must appoint Medical Officers of Health and Sanitary Inspectors for their area. By Section 108, the County Council are empowered (subject to the fulfilment of certain conditions) to pay one-half of the salaries of such Medical Officers of Health and Sanitary Inspectors. They may also, under Section 107 (2) of the same Act, make representations to the Minister of Health that a Borough Council or the City Corporation have failed to appoint a sufficient number of Sanitary Inspectors, and the Minister may on such representation order the authority concerned to appoint so many additional Inspectors as are necessary.

23. Subject to these general provisions, the public health powers of the County Council, the City Corporation and the Metropolitan Borough Councils may be considered under three heads: (a) environmental, (b) the prevention and cure of disease, and (c) the powers of the City Corporation as the Port of London Sanitary Authority.

24. (i) *Environmental*.—These powers and duties are con-

cerned with drainage and sewage disposal, the prevention of nuisances, offensive trades, slaughter houses, &c.

The County Council are, as successors to the Metropolitan Board of Works, directly responsible for the maintenance of the London main drainage system throughout the whole administrative County. Under the Metropolis Management Act, 1855, and subsequent Acts, all main sewers are vested in the Council, and they are under an obligation to maintain and keep efficient all such sewers, together with any sewers which they may from time to time declare to be main sewers. The growth of London has rendered it desirable to include districts outside the administrative County within the London main drainage system, and several areas have been brought into the system under powers conferred by local Acts and by arrangement with the Council. The Council can compulsorily acquire land for the purpose of any main sewer, and wide powers are vested in them for the purpose of protecting their sewers and for preventing encroachment upon them. The Council have works at Barking and Crossness outside the County in connection with the outfall of their main sewers.

25. Local sewers are under the control of the Borough Councils and of the City Corporation, but (save in the City) subject to the supervision of the County Council. The construction of new local sewers outside the City is subject to the approval of the County Council, who may also make byelaws with which the Borough Councils must comply, in connection with cleansing and repair of local sewers, pipes and apparatus connected therewith. No local sewers may be connected with any main sewer in any part of the administrative County without the Council's consent.

26. The regulation and abatement of nuisances in the administrative County is in the main under the control of the Borough Councils and the City Corporation, but the County Council have power to make byelaws for the prevention of nuisances over which the Borough Councils have no special power, and in particular under Section 16 (2) of the Public Health (London) Act, 1891, with reference to the removal of offensive matter or liquid, cesspools and privies, the removal and disposal of refuse, and other matters. They may apply for a magistrate's order to abate nuisances caused by a Borough Council in the removal and disposal of refuse. These byelaws are enforceable by the Borough Councils. The County Council have also power to make byelaws regulating the conduct of offensive businesses, and may, with the consent of the Minister of

Health, declare any business to be an offensive business. The Council license and inspect slaughter houses, &c., and they make byelaws regulating them, save in the City.

27. (ii) *Prevention and Cure of Disease, &c.*—The public health powers and duties relating to the prevention and cure of disease and analogous matters are, as in other cases, distributed among the County Council, the City Corporation and the Borough Councils on no very clear principles. The powers and duties given by the Public Health (London) Act, 1891, for the purpose of preventing infectious disease, removal of sick persons to hospital, disinfection of houses and clothing, &c., are exercised and performed by the Borough Councils and by the City Corporation. The Act also applies to London the power of the Minister of Health to make regulations for the prevention of epidemic diseases under Section 134 of the Public Health Act, 1875, and these regulations are enforced by the same authorities; but in 1893 a General Powers Act of the County Council enabled powers conferred by the regulations to be assigned by the Minister to the County Council.

28. The Public Health (London) Act, 1891, Section 56 (6), empowers the County Council, with the sanction of the Minister, to add to the number of infectious diseases which are compulsorily notifiable, and this provision extends throughout the whole administrative County of London.

29. Regulations made by the Minister of Health under the Public Health (Prevention and Treatment of Disease) Act, 1913, require the County Council and the City Corporation to prepare schemes for the treatment of venereal disease.

30. The Tuberculosis Act, 1921, imposes on County and County Borough Councils the duty of making adequate arrangements for the treatment of tuberculosis, and the powers of the County Council under this Act extend throughout the whole administrative County of London. Provision is also made in the Act whereby the Metropolitan Asylums Board may make agreements with the County Council for the reception of persons suffering from tuberculosis into their hospitals.

31. With regard to maternity and child welfare, the City Corporation and the Borough Councils are the authorities under the Notification of Births Act, 1915, and the Maternity and Child Welfare Act, 1918; but the County Council have power with regard to the medical inspection and cleansing of children under the Education Act, 1921, and their General Powers Act of 1907.

The County Council are the local supervising authority under the Midwives Acts, 1902 and 1918, and have also power under one of their special Acts to provide for the training of midwives. They also have power under the Children Act, 1908, to inspect and license homes for children.

32. The powers given by the Cleansing of Persons Act, 1897, are exercised by the Borough Councils and by the City Corporation, who are also the authorities under the Baths and Washhouses Acts.

33. The Blind Persons Act, 1920, has imposed a duty on the County Council and on the City Corporation to make arrangements to the satisfaction of the Minister of Health for promoting the welfare of blind persons ordinarily resident within their areas.

34. Among the more general powers relating to this branch of the public health which are possessed by Borough Councils and by the City Corporation is that of appointing health visitors, one-half of whose salaries is now paid by the County Council. The Borough Councils and the City Corporation have also, as sanitary authorities under the Public Health (London) Act, 1891, a general power of providing hospitals. The County Council may also establish and maintain an ambulance service outside the City.

35. The Orders of the Minister of Agriculture made under the Diseases of Animals Acts are enforced in the City by the City Corporation and elsewhere by the County Council. But, under the Contagious Diseases (Animals) Act, 1869, the City Corporation are the sole authority for London so far as regards the importation and regulation of foreign cattle, and the Deptford Cattle Market was established by them for the purpose of carrying out their statutory duties under the Act.

36. (iii) *Port of London Sanitary Authority*.—The City Corporation are the Port Sanitary Authority of the Port of London (Public Health (London) Act, 1891, S. 111).

For the purposes of the Act the Port of London means the Customs Port, the limits of which are fixed by Treasury Warrant of August 10th, 1883. The limits extend from Teddington Lock to a line drawn from the entrance of Havengore Creek, in Essex, to Warden Point, in the Isle of Sheppey, and up the Medway to the port of Rochester. A vessel lying within these limits is subject to the jurisdiction of the Authority as if it were a house of which the master of the vessel was the occupier.

The Port Sanitary Authority may (with the consent of the

Minister of Health) delegate any of their powers to a Riparian Sanitary Authority.

The powers of the Authority are defined by an Order of the Local Government Board, dated March 25th, 1892, which conferred upon it the powers exercisable by sanitary authorities under certain sections of the Act of 1891 relating to (*inter alia*) nuisances, unsound food, infectious diseases and hospitals. The Authority also enforces, as regards the Port, Section 23 of the Act relating to smoke consumption.

(c) *Housing.*

37. The powers and duties of local authorities under the Housing Acts, 1890 to 1921, are variously distributed in the administrative County of London.

The duty of enforcing by means of Closing Orders and otherwise the standard of repair imposed by the Acts in the case of individual houses is performed by the Borough Councils and the City Corporation.

Reconstruction schemes under Part II of the Act of 1890 are also prepared by the Borough Councils and the City Corporation, but the County Council may, of its own motion or on the representation of a Borough Council, themselves prepare a reconstruction scheme in any Metropolitan Borough.

Improvement schemes under Part I of the Act of 1890 are prepared by the County Council in the County of London, and in the City by the City Corporation, but may be initiated either by the Medical Officer of Health of the County Council or the Corporation or by any Medical Officer of Health in London.

Schemes under Part III of the Act of 1890, that is to say, schemes for the provision of new houses, may be prepared by the County Council, by the City Corporation or by any Metropolitan Borough. By the Act of 1919 (Section 41) the functions of the respective authorities are defined. The County Council are the local authority to the exclusion of any other authority (except the City Corporation) so far as regards the provision of any houses outside the administrative County of London, and the Borough Councils are the local authority for their Boroughs to the exclusion of any other authority, so far as regards the provision of houses within the Borough.

38. The Minister of Health may order any of the powers and duties of the Borough Council under Part III of the Act of 1890

to be transferred to the County Council and vice versa; and the County Council and the City Corporation may combine for the purpose of carrying out a scheme and for the apportionment of the expenses incurred in connection with it. The County Council have also the power, but only with the approval of the Minister, to develop land within the area of a Borough Council for the purpose of meeting the needs of districts situate outside that area.

39. The County Council are primarily the local authority for the purposes of the Small Dwellings Acquisition Act, 1899, for the whole of the administrative County, but the City Corporation and the Borough Councils may adopt the Act by resolution, and in that case they become the local authority for their own area to the exclusion of any other authority. The City Corporation and several of the Borough Councils have adopted the Act in this manner. The County Council are the local authority for the whole of the administrative County for the purpose of the town planning provisions of the Housing Acts.

40. The County Council make bye-laws with regard to the licensing and regulation of common lodging houses and seamen's lodging houses; in the City these are made by the City Corporation. With regard to houses let in lodgings and tenement houses, the powers of the Borough Councils were transferred to the County Council by the Housing Act of 1919, and the County Council and the City Corporation have power to make bye-laws.

41. The Public Health (London) Act, 1891, contains various provisions regulating the use of underground rooms as dwelling places, and these are enforced by the Borough Councils and by the City Corporation.

(d) *Lunacy and Mental Deficiency.*

42. The County Council and the City Corporation are the authorities under the Lunacy Act, 1890, for the County and the City of London respectively. But the County Council are, under the Mental Deficiency Act, 1913, the authority for the whole of the administrative County for the purposes of that Act.

(e) *Streets, Bridges and Embankments.*

43. Under the Local Government Act, 1888, a certain number of main roads became vested in the County Council, but by Section 6 of the London Government Act, 1899, these roads were transferred to the Borough Councils. The City Corporation and the

Borough Councils are now the authorities responsible for the maintenance of all roads and highways within their area, subject to the exceptions noted below.

44. The County Council, as successors to the Metropolitan Board of Works, are responsible for the maintenance and repair of all the Thames bridges and tunnels (other than railway bridges and tunnels) outside the City. The City Corporation as trustees of the Bridge House Estates maintain and repair the Thames bridges leading from the City. The County Council, as successors to the Justices, are responsible for the maintenance and repair of all County bridges.

45. The County Council under various special Acts maintain the Victoria Embankment, and other Embankments (*quâ* embankments), and are under an obligation to take steps for the purpose of preventing floods throughout the whole administrative County.

46. With regard to new streets and street improvements, the London Building Act, 1894, requires the sanction of the County Council to all proposals for the formation of new streets, and the County Council's bye-laws regulating this subject extend through the whole of the administrative County. The County Council may also themselves, under powers given by the Metropolis Management Act, 1855, and other Acts, make, widen and improve streets; and under the same Act, Borough Councils may widen, alter or improve streets, subject to the approval of the County Council. In the City the City Corporation, as successors to the Commissioners of Sewers, have similar powers, but the exercise of these is, generally speaking, not subject to the approval of the County Council, though the Council's bye-laws must be observed. Under Michael Angelo Taylor's Act, 1817 (now extended to the whole of the administrative County) the City Corporation and the Borough Councils have also wide powers relating to the improvement and regulation of streets and the removal of obstructions therein, including powers of compulsory purchase. Most of the large improvement schemes in the administrative County have, however, been carried out under powers conferred by special Acts.

47. The City Corporation and Borough Councils in their capacity as local Sanitary authorities are responsible for the cleansing, paving and lighting of streets in their areas; but the County Council perform these duties in respect of certain Thames bridges which they maintain and county bridges and the Victoria Embankment.

(f) *Buildings.*

48. The principal Act relating to the control of buildings in London is now the London Building Act, 1894. Under this Act the County Council are the principal authority for the regulation of building lines and buildings throughout the whole administrative County, and they are empowered to make bye-laws with regard to these and a variety of kindred subjects. Their executive officers for this purpose are the Superintending Architect and the District Surveyors, all of whom are appointed by the Council. The power of regulating dangerous structures in the City is, however, reserved to the City Corporation, and the Borough Councils have also certain minor powers under the Act within their own areas. An appeal tribunal of three persons appointed by the Secretary of State, the Surveyors' Institution and the Royal Institute of British Architects, respectively, decide disputes under the Act. A fourth member is appointed for certain special purposes by the Institute of Civil Engineers.

(g) *Fire Protection.*

49. The County Council are, under the Metropolitan Fire Brigade Act, 1865, as successors to the Metropolitan Board of Works, the sole authority of the whole administrative County for the purposes of fire protection. Under this Act the Council maintain the London Fire Brigade, the expenses of which are paid for mainly out of the County rate, but partly by means of contributions from the Exchequer and from the Fire Insurance Companies. The Council are authorised to employ the Brigade out of the administrative County in special cases, and to make arrangements with local authorities outside the County for its services.

The London Building Acts contain provisions designed to minimize the danger of fires, and the Council have also, under other Statutes, the special duty of securing that factories, workshops, theatres and places of amusement are provided with proper means of escape in the event of fire.

(h) *Tramways, &c.*

50. Under the Tramways Act, 1870, the County Council are the local authority for the County of London outside the City, the City Corporation being the authority for the City. The County Council, in the exercise of their powers as local authority, have

purchased almost the whole of the tramways in the County outside the City, and special powers to work such tramways were obtained in 1896. As regards new tramway proposals, the County Council and the City Corporation as local authorities and the Corporation and the twenty-eight Metropolitan Borough Councils as "road authorities" all possess a veto as regards their respective areas conferred by Standing Order No. 22 of both Houses of Parliament. For many years the County Council have been practically the only promoter of new tramways in London and the veto of the Corporation and the Metropolitan Borough Councils has been freely exercised as regards these schemes. The County Council have under special Acts the power of running steamboats upon the Thames, of making subways under the Thames and elsewhere, and also maintain a free ferry across the Thames at Woolwich.

(i) *Gas and Electricity.*

51. Both the County Council and the City Corporation are, under the Gas Regulation Act, 1920, and other statutes, empowered to appoint gas examiners for the purpose of testing gas and gas meters.

For the purposes of the Electric Lighting Acts and the London Electric Supply Acts, the City Corporation and the Metropolitan Boroughs are local authorities, as are also the County Council in those parts of the metropolis which the Council are authorised to light. But the County Council have powers of supervision and control, save in certain cases in which their jurisdiction has been excluded by special Acts. The Borough Councils are also in many cases the electrical undertakers as the successors to the elected Vestries and District Boards under the Metropolis Management Act, 1855, to whom the powers were originally granted by a Provisional Order. But a series of Acts, of which the most important are the London Electric Supply Act, 1908, and the London (Westminster and Kensington) Electric Supply Companies Act, 1908, has enabled the statutory companies and the local authorities carrying on electrical undertakings in the metropolis to combine for various purposes, and has also substituted the County Council for the local authorities as the authority empowered to purchase most of the undertakings of the statutory companies. Under the Electricity (Supply) Act, 1919, the power theretofore vested in the County Council to sanction loans by local authorities under the Electric Lighting Acts or any special Act or Order relating to the

supply of electricity is transferred to the Electricity Commissioners who, however, must consult with the Council before exercising the powers so transferred.

The Act also enables the Electricity Commissioners to set up electricity districts and to group areas for this purpose. Proposals have recently been made by the Commissioners for the constitution of a London and Home Counties District which would include the whole administrative County of London and large surrounding areas.

(j) *Markets.*

52. The County Council have no statutory power to provide markets, but by their General Powers Act of 1891 they were given power to hold inquiries with regard to markets and market rights which are not the property or under the control of the City Corporation and matters incidental thereto.

Many of the principal markets in the metropolis belong to or are under the control of the City Corporation, who derive their powers with respect to them either from their charters or from special Acts. It is said that the effect of the City charters is that the Crown has no longer the right to grant a market franchise to any other person or body within seven miles of the City. The Metropolitan Cattle Market, Spitalfields Market, and the Deptford Cattle Market, to which reference has already been made, are important markets outside the area of the City, and belong to the Corporation.

The Borough Councils have no powers themselves to provide municipally owned markets, but the Woolwich Borough Council, as successors to the former Woolwich Local Board are the owners of a market in Woolwich.

There are other markets in the administrative County of London in private ownership.

(k) *Commons, Open Spaces and Parks.*

53. The County Council, the City Corporation and the Borough Councils are all local authorities for the purpose of the Open Spaces Act, 1906.

The County Council are the local authority under the Metropolitan Commons Act, 1866, so far as regards commons within the Metropolitan area outside the City, and are empowered under the Act to take such steps as they may think fit for the purpose of

preserving such commons for the enjoyment of the public. They may also contribute for the purpose of the protection of commons outside the administrative County but within the Metropolitan Police District.

The City Corporation are empowered under the Corporation of London (Open Spaces) Act, 1878, to acquire open spaces not within the administrative County of London but within 25 Miles of the City boundary.

Both the County Council and the City Corporation have acquired certain parks and open spaces under special Acts and have been given powers with respect to them. The City Corporation, which under their charters and otherwise have wide powers of purchasing lands, have become the owners of various pieces of land, some of them at a considerable distance from the City, which are maintained for the benefit of the public.

(1) *Police.*

54. The County Council have no powers with respect to the police in any part of the administrative County, the Metropolitan Police being under the exclusive control of the Secretary of State. There is, however, a City police force under the control of the City Corporation, partly maintained (as in the case of other police forces) by contributions from the Exchequer. The Commissioner of the City Police is appointed by the City Corporation, subject to the approval of the Secretary of State.

(m) *Miscellaneous Services.*

55. There are numerous services of a miscellaneous character administered by the County Council, the City Corporation and the Borough Councils. Among these may be mentioned duties under the Weights and Measures Acts, the Shop Acts, the Fertilisers and Feeding Stuffs Acts, the Small Holdings and Allotments Acts, the Milk and Dairies Act, and others. The County Council are also the authority for granting licences for music and dancing, and for theatres which are not subject to the control of the Lord Chamberlain, throughout the whole of the administrative County. An exhaustive account, however, of the statutory powers and duties of the County Council, the City Corporation and Borough Councils would extend this memorandum to an unreasonable length, and for the same reason no mention has been made of the many non-statutory

tory activities of the City Corporation financed from their corporate funds.

....

AUTHORITIES EXERCISING JURISDICTION WITHIN THE ADMINISTRATIVE COUNTY OF LONDON AND ALSO IN AREAS OUTSIDE THE ADMINISTRATIVE COUNTY.

82. It has already been mentioned that certain of the local authorities, of which an account is given above, exercise and perform some of their powers and duties outside the administrative County of London. For example, the powers of the City Corporation in their capacity as the Port of London Sanitary Authority extend down the river for a considerable distance. The City Corporation and the London County Council also have powers with regard to open spaces which extend beyond the administrative County. The main drainage area of the County Council has been extended under powers given by special Acts to areas outside the County, and both the County Council and the City Corporation may exercise powers under Part III of the Housing Act, 1890, outside the County. But none of the above authorities (with the exceptions already mentioned) have any defined area outside the administrative County to which their jurisdiction extends. There are, however, other very important authorities, the area of whose jurisdiction includes, either directly or indirectly, the whole or part of the administrative County of London and a large defined area beyond its boundaries. These authorities are the Secretary of State and the Receiver of Metropolitan Police in respect of the Metropolitan Police, the Metropolitan Water Board, the Port of London Authority, the Thames Conservancy Board (though the powers of this Board only affect the administrative County indirectly), and the Lee Conservancy Board.

THE SECRETARY OF STATE AND THE RECEIVER OF METROPOLITAN POLICE.

83. It has already been stated that the London County Council, unlike other County Councils, are not concerned, directly or indirectly, with the control of any part of the police within the Metropolitan area. The City Police are a separate force under the control of the City Corporation, but in the rest of the administrative County and throughout the whole of the Metropolitan Police District (as defined below), the control of the police is in the hands of

the Secretary of State, for whom the Receiver of the Metropolitan Police acts in financial and various administrative matters.

84. *Area.* The Metropolitan Police District comprises the County of London, exclusive of the City, the County of Middlesex, the County Boroughs of Croydon, East Ham and West Ham, and such parishes and places in the Counties of Surrey, Herts, Essex, and Kent within a radius of not more than 15 miles from Charing Cross as the King by Order in Council may include. The District was first constituted by the Metropolitan Police Act, 1829.

Under Section 2 of the Metropolitan Police Act, 1839, any place which is part of the Central Criminal Court district (except the City of London) and any part of any parish, township, precinct, or place which is not more than 15 miles distant from Charing Cross in a straight line may be added to and form part of the Metropolitan Police District by Order in Council.

The area to be included in the District under these provisions was defined by an Order in Council made in 1840.

85. *Finance.* The expenses of the Metropolitan Police are defrayed partly out of the rates and partly from the Exchequer. A certain proportion is indirectly met out of the rates by being charged against the Exchequer Contribution Account, being deducted from the sum which would otherwise go to the County Council under this head and paid directly by the Exchequer to the Receiver. By Section 23 of the Act of 1829, the Receiver is empowered to issue his warrant to the overseers of every parish (in the Metropolis, the Borough Councils) within the Police District requiring payment of a specified sum which is then raised by means of a rate. The former statutory limitation on the amount of this rate was removed by the Police Act, 1919.

THE METROPOLITAN WATER BOARD.

86. The Metropolitan Water Board were constituted in 1902 by the Metropolitan Water Act of that year for the purpose of acquiring and carrying on the undertakings of eight existing Water Companies, viz:—

- The New River Company;
- The East London Water Works Company;
- The Southwark and Vauxhall Water Company;
- The West Middlesex Water Works Company;
- The Lambeth Water Works Company;

The Chelsea Water Works Company;
The Grand Junction Water Works Company; and
The Kent Water Works Company;

and also the water undertakings of the Tottenham and the Enfield Urban District Councils.

87. *Area.* The area within which the Metropolitan Water Board supply water covers about 530 square miles. It includes the Ware Rural District in the North, part of Sevenoaks Rural District in the south-east, and Esher in the south-west; it does not coincide with any other local government area or with any areas formed for any other public purpose. The area is substantially that of the Undertakings which were combined in 1902; parts, however, of the Boroughs of Croydon and Richmond and of the Urban Districts of Cheshunt and Ware were excluded from the Board's area, but with provisions as to a supply in bulk. Two parishes which were not within the limits of supply of the former Companies but were in fact supplied by them were included in the area. The Board supply the whole of London, sixteen parishes in Essex, nine in Hertfordshire, thirty-nine in Kent, twenty-three in Middlesex, and twenty-four in Surrey.

88. *Constitution.*—The Metropolitan Water Board consist of 66 members, with a Chairman and Vice Chairman, who may be chosen from within or without the Board and may be paid salaries. The term of office is three years. The members are appointed as follows:—

14 by the London County Council.

1 each by the County Councils of Essex, Kent, Middlesex, Surrey and Hertfordshire.

2 each by the Cities of London and Westminster.

2 by the Borough Council of West Ham.

1 by the Borough Council of East Ham.

1 by each of the 27 Metropolitan Borough Councils.

1 each by the Urban Councils of Leyton, Walthamstow, Tottenham and Willesden.

7 by various groups of Borough and Urban District Councils.

1 each by the Thames Conservators, and the Lee Conservancy Board.

89. *Powers and Duties.*—The duty of the Board is to supply water within the limits referred to in the preceding paragraph.

The Board obtain the water from the rivers Thames and Lee and their tributaries and from wells and springs in land belonging to the Board.

90. *Finance.*—The Board's primary source of revenue is the rates and charges which they are authorised by statute to make for supply of water to consumers. Any deficiency, however, in a year's working is apportioned amongst the districts whose Councils are represented on the Board in proportion to the rateable values of the properties within those districts which are supplied with water. Until 1908-9 it was not found necessary to levy any Deficiency Rate, but this has in recent years been necessary. In 1921, Parliament, being satisfied that the maximum rates and charges were insufficient to enable the Board to carry on their Undertaking without incurring a deficiency, increased its maximum rates; and at the same time provision was made for issuing precepts to the various contributing authorities in respect of an estimated deficiency instead of necessarily waiting until the completion of a financial year disclosing an actual deficiency. In the administrative County of London the Board issue their precepts for the purpose of a deficiency rate to the City Corporation and the Borough Councils.

THE PORT OF LONDON AUTHORITY.

91. The Port of London Authority were established by the Port of London Act, 1908, "for the purpose of administering, preserving and improving the Port of London" and are now regulated by the Port of London (Consolidation) Act, 1920.

At the outset there were transferred to the Authority the undertakings of the London and India Docks Company, the Surrey Commercial Dock Company, and the Millwall Dock Company, and the Authority were empowered to acquire other similar undertakings.

92. *Area.* The "landward limit" of the Port of London is a line drawn across the River Thames at the point where the parishes of Teddington and Twickenham join on the Middlesex bank, and the "seaward limit" is a line drawn from the entrance of Havengore Creek in Essex to Warden point in the Isle of Sheppey. The "limits of the Port" extend down both sides of the river from the landward limit to the seaward limit, and include all islands, rivers, streams, creeks, watercourses, channels, harbours, docks, and places within those limits (and all places which by any Statute are deemed to be within the Port of London), but do not include any part of the River Medway above the seaward limit of the Medway Con-

servators' jurisdiction or any part of the River Swale or any part of the River Lee or Bow Creek within the jurisdiction of the Lee Conservancy Board or any part of the Grand Junction Canal.

For some purposes the lower portion of the River Lee and Bow Creek is within the Authority's jurisdiction; for purposes connected with the prevention of pollution, the Thames and its tributaries up to the western boundary of the County of London are within their cognisance.

93. *Constitution*.—The Port Authority consists of:—

- (a) 18 *elected* members, 17 being elected by payers of dues, wharfingers, and owners of river craft, and 1 by wharfingers.
- (b) 10 *appointed* members, appointed as follows:—
 - 1 by the Admiralty.
 - 2 by the Minister of Transport; of these one is to be appointed after consultation with organisations representative of Labour.
 - 4 by the London Council; of these two must be members of the Council and two must be non-members, and one must be appointed after consultation with organisations representative of Labour.
 - 2 by the City Corporation, one a member of the Corporation and one a non-member.
 - 1 by the Trinity House.

The Authority appoint their own Chairman and Vice-Chairman, who need not be elected or appointed members of the Authority, and they may pay salaries to the Chairman, the Vice-Chairman, and the Chairman of any Committee.

All members of the Authority hold office for three years, and go out of office together on April 1st in every third year.

94. *Powers and Duties*.—The Authority's duties may be described generally as to take such steps from time to time as they consider necessary for the improvement of the River Thames within the Port and the accommodation and facilities in the Port, and for these purposes they may acquire and carry on dock and other undertakings affording facilities for loading, unloading and warehousing goods in the Port, and may construct and manage docks, quays, piers, etc.

As incidental to the above-mentioned general duties, the Authority have wide powers in respect of such matters as dredging

and removal of obstructions, prevention of pollution, licensing of piers and landing places, licensing of watermen and lightermen, licensing and registration of boats, beacons and lights, moorings, harbour-masters, etc.

95. *Finance*.—The revenue of the Authority is derived from port rates on goods, tonnage duties and tolls on vessels, rates for services to goods (e.g., in respect of wharfage, unshipping, weighing, housing, &c.), rates on vessels using docks and licensing and registration fees.

The Authority submit annually to the Minister of Transport an estimate of receipts and expenditure. If the Minister considers that there will be a deficit (or he finds that there was a deficit in the preceding year) he may direct additional or increased rates to be levied; but a Provisional Order is necessary if the statutory maxima are to be exceeded.

The Authority's accounts are audited annually by an auditor appointed by the Minister of Transport.

The Authority may borrow money for the purposes of their duties by the issue of Port Stock or in such other manner as the Minister of Transport may direct. The amount of loans outstanding at any one time is not to exceed by more than £10,000,000 the amount of the stock originally issued as the purchase consideration for the docks transferred in 1908.

THE THAMES CONSERVANCY BOARD

96. *Area*.—The jurisdiction of the Conservators extends from the town of Cricklade in Wiltshire to the landward limit of the Port of London just below Teddington Lock, and it includes a small portion of the River Kennet at Reading. The jurisdiction of the Conservators in respect of the prevention of pollution extends to all tributaries which join the river within the limits above mentioned.

Until 1908 the jurisdiction of the Conservators extended down stream to Yantlet Creek in the Isle of Grain; but in the year named their powers and duties below Teddington Lock were transferred by Parliament to the Port of London Authority.

97. *Constitution*.—The Thames Conservancy Board consist of 24 members holding office for three years. The Chairman, who holds office for one year, is chosen from among the members. The members are appointed as follows:—

- 4 by the Board of Trade;
- 1 by the Port of London Authority;
- 2 by the City Corporation;
- 3 by the London County Council;
- 1 each by the County Councils of Berkshire, Buckinghamshire, Hertfordshire, Middlesex, Oxford and Surrey; and
- 1 by the County Councils of Gloucester and Wiltshire combined;
- 5 by the Councils of various Boroughs;
- 2 by combinations of Borough and Urban District Councils;
- 2 by groups of other Urban District Councils; and
- 2 by the Metropolitan Water Board.

98. *Powers and Duties.*—The duty of the Conservators is to improve and conserve the navigation of the river and to prevent pollution of the water. Their incidental powers and duties include the dredging of the channel, the removal of sunken vessels and other obstructions, the erection of beacons and the enforcement of byelaws as to navigation.

99. *Finance.*—The revenues of the Conservators are derived from the following main sources:—

- (a) Payments in respect of the abstraction of water by the Metropolitan Water Board and certain other Water Authorities;
- (b) Tolls on merchandise, barges and pleasure craft;
- (c) Registration fees in respect of pleasure craft; and
- (d) The sale of ballast from the bed of the river.

In 1921, Parliament, being satisfied that the Conservators' revenue had become insufficient, increased for a period of five years the various payments to be made in respect of the abstraction of water, and also the maximum tolls and registration charges.

THE LEE CONSERVANCY BOARD.

100. The Conservancy of the River Lee depends upon fourteen local Acts dating from the reign of Elizabeth to 1921.

Area.—The jurisdiction of the Board extends to the River Lee throughout its length from Hertfordshire to Bow Creek (a length of 70 miles), and to the tributaries of the Lee, the chief of which is the Stort (length 19 miles).

101. *Constitution.*—The Conservancy Board consist of 15 members elected or appointed (for the term of 3 years) as follows:—

- 1 by the City Corporation.
- 2 by the London County Council.
- 2 by the Metropolitan Water Board.
- 1 each by the County Councils of Bedfordshire, Essex, Hertfordshire and Middlesex and the West Ham County Borough Council.
- 4 by certain Local Authorities grouped for the purpose, and
- 1 by large owners.

102. *Powers and Duties.*—The duties of the Conservancy Board expressed in general terms are the prevention of pollution in the River Lee and its tributaries, the general control of the Lee Navigation (including the Stort Navigation) and the regulation of fisheries in these streams.

103. *Finance.*—The revenues of the Board are derived from the following sources:—

Navigation tolls.

Licensing fees.

Rentals paid by the Metropolitan Water Board for water taken from the streams, and a further payment made by the same Board towards the expenses of protecting the water supply.

It may be noted that in the year 1921 the Board found it necessary to ask Parliament to increase the maximum tolls hitherto charged and also to double the payments made by the Metropolitan Water Board.

In 1920, the Board were authorised to expend a limited sum in preparing a scheme for preventing floods in the Lee watershed. This sum was not to be found out of the ordinary revenues of the Board, but was to be obtained by precept from various local authorities whose areas were affected,

THE CENTRAL CRIMINAL COURT DISTRICT.

104. The area comprised in this District is in no sense a local government area, but it is perhaps desirable that some account should be given of it.

The Central Criminal Court have jurisdiction over crimes committed within the City of London, the County of London, the County of Middlesex, a small area in Hertfordshire which was formerly part of Middlesex, so much of the County of Surrey

as is within the parishes of Barnes, Merton, Mortlake, Wimbledon, Kew, and Richmond, and hamlet of Mottingham in the County of Kent, and so much of the County of Essex as is within the parishes of Barking, East Ham, West Ham, Little Ilford, Leyton, Walthamstow, Wanstead St. Mary, Woodford, and Chingford.

These limits were fixed by the Central Criminal Court Act, 1834, Section 2, the mention of the County of London being introduced by the Local Government Act, 1888, Section 89 (1).

A permanent extension of the limits could only be effected by Act of Parliament; but for the purpose of any winter and spring assizes an Order in Council may extend them in the months of November, December, January, March, April, and May to any neighbouring county or part of a county mentioned in the Order (Winter Assizes Act, 1876; Spring Assizes Act, 1879).

THE LONDON AND HOME COUNTIES ELECTRICITY DISTRICT.

105. The Electricity Commissioners have, as already described, power to constitute Electricity Districts and to group areas for this purpose. Acting under these powers (conferred on them by the Electricity (Supply) Act, 1919) the Commissioners have put forward proposals for a London and Home Counties District, which would include the administrative County of London and a very extensive area outside the county. The statutory inquiry into these proposals has been held, but the Report of the Commissioners has not yet been published. . . .

97. The Government of Greater Berlin, 1920.

Before the World War, Berlin had reached a situation in which an almost equal number of people were living within the city itself and in the neighboring municipalities. In 1911, provision was made for a "union" for the control of tramways and rapid transit lines and the acquisition of open spaces, and during the war numerous such unions were created for the purpose of meeting particular emergencies. Berlin had become, however, one of the most notable examples of the "metropolitan problem." There was much conflict of authority and a great deal of lost

motion in dealing with matters of interest to the whole area. In 1920 an act was passed by the Prussian Landesversammlung establishing the municipality of Greater Berlin. The greater city has a population of about 3,800,000 and embraces practically the whole of the Berlin metropolitan district.

In organization Greater Berlin differs from the Administrative County of London in that the Prussian statute wiped out all the pre-existing units of government and substituted for them twenty administrative districts (*Verwaltungsbezirke*). Six of these districts were formed from the old city and the rest from the annexed territory. They differ considerably in population, those formed from the old city being much more densely inhabited than the others. It is presumed that the movement of population will ultimately equalize to a large degree the present differences. To these districts considerable powers have been delegated.¹

SOURCE—Gesetz über die Bildung der neuen Stadtgemeinde Berlin, enacted by the Prussian Landesversammlung, April 27, 1920.

§ 1.

The following Stadtgemeinden, Landgemeinden and Gutsbezirke:² . . . , in so far as they constitute part of the Circles of Teltow, Niederbarnim and Osthavelland and of the Province of Brandenburg, are separated from these jurisdictions and shall constitute the City of Berlin.

(2) The new City of Berlin constitutes a municipal union and a Verwaltungsbezirk³ separate from the Province of Brandenburg. It shall be considered as an enlargement of the hitherto existing City of Berlin. The statutory provisions hitherto applicable to the former City of Berlin in its capacity as municipal union and as Verwaltungsbezirk, apply to the new City of Berlin, in so far as nothing to the contrary is contained in this act.

¹ The proportional representation provisions of the Berlin act appear separately, as § 92.

² The act combined 8 Stadtgemeinden or urban municipalities; 46 Landgemeinden or rural municipalities; and 27 Gutsbezirke, or manorial districts.

³ Administrative district.

§ 2.

This consolidation transfers all rights and duties of the *Gemeinden* and *Gutsbezirke* named in § 1 to the new City of Berlin.

§ 3.

The *Zweckverbandsgesetz*¹ for Greater Berlin of July 19, 1911, is repealed. The Union of Greater Berlin created by this act is dissolved. Its rights and duties devolve upon the new municipality of Berlin.

. . . .

§ 5.

(1) By agreement between the new City of Berlin and the Provincial Unions of the Province of Brandenburg, specified municipal functions may be transferred to a public law corporation created by the two municipal unions (to be known as the municipal union of Berlin-Brandenburg). The legal relations of this municipal union, especially the extent of the functions to be fulfilled by it, shall be determined by an ordinance, which shall be the basis of the agreement between the parties.

(2) The determination of the ordinance of the municipal union shall require confirmation by the Arbitral Court.²

(3) The supervision of the state over the administration of the affairs of the Union shall be exercised in the first instance by the *Oberpräsident*, and, upon appeal, by the Minister of the Interior together with the other Ministers concerned. The *Oberpräsident* is authorized to participate in the deliberations of the organs of the Union, either personally or through representatives. He or his representatives must always be heard.

(4) Appeal to the higher jurisdiction must be made within two weeks.

. . . .

(6) The officials of the Municipal Union shall have the rights and duties of provincial officials.

¹The act creating the Municipal Union of Greater Berlin. See the introductory note.

²This municipal union of Berlin-Brandenburg is to be created in the course of the negotiations made necessary by the separation of the corporations named above from their previous jurisdictions. These negotiations are to be conducted under an Arbitral Court under the chairmanship of the *Oberpräsident* of the province of Brandenburg and of Berlin.

(7) Further regulations respecting the matters dealt with in this paragraph are reserved to a later act.

. . . .

§ 14.

(1) The city shall be divided into Verwaltungsbezirke,¹ according to Annex 2.²

(2) The number and boundaries of the Verwaltungsbezirke may be altered by joint resolution, if the district assemblies concerned agree thereto. An election district must, however, include one or more undivided Verwaltungsbezirke.

(3) To safeguard local interests, to provide for self-government, and to relieve the municipal authorities of the city of Berlin, a district assembly³ and a collegiate district board⁴ shall be organized in each Verwaltungsbezirk.

§ 15.

(1) The district assemblies shall consist of municipal deputies⁵ and citizens qualified to vote (district deputies)⁶ in accordance with the following provisions:

1. (1) When a Verwaltungsbezirk coincides with the area of an election district, all the municipal deputies chosen in the election district are at the same time members of the district assembly.

(2) When an election district consists of several Verwaltungsbezirke, the municipal assembly shall divide the municipal deputies chosen in this election district among the district assemblies of the Verwaltungsbezirke concerned.

(3) The municipal deputies elected upon city-wide nominations shall be apportioned by the municipal assembly among the district assemblies of the individual Verwaltungsbezirke.

(4) In apportioning municipal deputies among district assemblies, the residence of the municipal deputy in the district or other personal relations thereto shall, whenever possible, be taken into consideration.

¹ Verwaltungsbezirk is probably best translated as administrative district.

² Annex 2 specifies the areas from which Verwaltungsbezirke are to be created.

³ Bezirksversammlung.

⁴ Kollegiales Bezirksamt.

⁵ Stadtverordneten.

⁶ Bezirksverordneten.

2. (1) The district deputies shall be elected, in accordance with the general regulations governing the election of municipal deputies, by the enfranchised inhabitants of the Verwaltungsbezirke for the same term as the municipal deputies.

(2) There shall be elected in the Verwaltungsbezirke
having less than 50,000 inhabitants, 15 district deputies,
having 50,000 and less than 100,000 inhabitants,
30 district deputies,
having 100,000 and less than 200,000 inhabitants,
40 district deputies,
having 200,000 or more inhabitants, 45 district deputies.

. . . .

(3) The elections of municipal deputies and of district deputies shall occur at the same time. More detailed provisions for carrying out the election of district deputies shall be issued by the Minister of the Interior.

§ 16.

The district assembly shall annually elect from among itself a chairman and a secretary, as well as their deputies.

§ 17.

(1) The district assembly shall hold regular sessions, and shall meet in addition as often as its business may require. Sessions shall be called by the chairman; the method of summons shall be fixed by the rules of order.

(2) The district-board concerned shall be invited to all sessions of the district assembly and may be represented by authorized deputies. The deputies of the magistrat¹ and of the district-board must be heard, as often as they desire.

§ 18.

(1) The district assembly can act only if more than half of the members are present. An exception occurs if the members have been summoned to consider the same matter for the second time, the first session having been incompetent to act. In the second summons attention must be called specifically to this condition.

(2) Resolutions shall be adopted by majority vote. In case of a tie, the proposition shall be considered defeated. The elections

¹ The magistrat is the executive body of the city.

to be held by the district assembly shall be conducted according to the rules of election to be fixed by the order of business. Votes not cast and invalid votes count toward the establishment of the quorum, but not in calculating the majority.

(3) In deliberating and voting upon matters touching the private interests of an individual member of the district assembly or of his relatives, the member may not be present.

§ 19.

(1) Sessions of the district assembly shall be public. With regard to specific matters the public may be excluded by special resolution, passed in secret session.

(2) The chairman shall preside over the sessions, open and close them, and conduct the procedure. He may have every spectator who, through public signs of approval or disapproval, causes disturbance or unrest of any kind, removed from the session chamber.

§ 20.

The acts of the district assembly shall be entered in a special book. The entries shall be signed by the chairman. The district-board shall be informed of all resolutions.

§ 21.

The district assembly shall determine its own rules of order.

§ 22.

(1) Subject to the limitations of the principles established by the municipal authorities, the district assembly shall legislate upon all affairs of the district.

(2) The district assembly is responsible for the supervision of the administration of those municipal services and institutions of its Verwaltungsbezirk which are intended principally to serve the interests of the Verwaltungsbezirk. It shall, as a basis for the municipal budget, annually prepare a report upon the needs of these institutions and arrangements, and shall submit it as a proposal to the magistrat, through the district-board. In preparing the budget of the city of Berlin, special appropriations shall be adopted for the needs of the districts, and shall be assigned to the districts to be put into effect. To put into effect these

appropriations, the organs of the district shall be given an appropriate field of action.

(3) The resolutions of the district assembly, except for its rules of order, shall be put into effect by the district-board.

(4) The district assembly has the right to investigate the carrying out of its resolutions and the use made of the means available for the local arrangements and institutions of the Verwaltungsbezirk. It may to this end require from the district-board an examination of the records.

(5) The district assembly has the duty of electing all honorary officials of the district.

(6) The district assembly, through the district-board, shall transmit to the municipal authorities requests, suggestions and proposals concerning its Verwaltungsbezirk.

(7) The competence of the district assembly may be enlarged by joint-resolution.

§ 23.

(1) The district-boards shall consist of seven members, elected by the district assembly.

(2) The chairman and his deputy shall be elected by the district assembly.

(3) At the first choice of members of the district-board the chairman and the deputy shall be appointed by the magistrat.

(4) The members of the district-board shall, as a rule, receive a salary; the salary will be fixed by local law. If a salary is paid, election shall be for twelve, otherwise for four, years. The term of office of the unpaid members of the district-board shall end before the expiration of the election period, as soon as the election period of the municipal assembly has expired or the assembly has been dissolved. The provisions of § 10 (2) apply to the unpaid members of the district-board.

(5) The chairman of the district-board shall have the title of bürgermeister, the members shall have the title of town councillor.

(6) The number of members of the district-board can be increased by local law, whereby, if necessary, the proportion of the number of paid and unpaid members is also to be fixed.

§ 24.

(1) The district-boards can act only if at least half of their members are present.

(2) The summons for sessions are issued by the chairman, who presides over the sessions.

(3) Resolutions shall be passed by majority vote. In case of a tie, the proposal shall be considered defeated.

(4) At the discussion and balloting upon matters touching the special private interests of a single member or of his relations, the member may not be present.

(5) Representatives of the magistrat must be heard in the sessions of the district-board, as often as they desire.

(6) The provisions applicable to members of the magistrat apply to members of the district-board, except as otherwise provided in this act. The disciplinary power over the bürgermeisters is vested in the Oberbürgermeister, over the other members of the district-board and the officials of the district, in the bürgermeister of the district-board.

§ 25.

(1) The district-boards are the administrative boards of the district. They are executive organs of the magistrat and must conduct, in accordance with the principles established by the magistrat, the affairs which the magistrat assign to them. They are subject to the control of the magistrat.

(2) Before acting upon:

1. The budget,
2. The delimitation of administrative powers between the municipal authorities and the district administration,
3. The veto in accordance with § 27 of this act, the magistrat must hear the chairmen of the district-boards in joint session.

(3) The district-boards are responsible for the administration of the municipal services and institutions of their Verwaltungsbezirk, except those administered directly by the magistrat. The district-boards appoint all of their officials, though without prejudice to the right of the magistrat to replace officials for the good of the service; the reasons for such replacements are to be communicated to the district-board concerned. The authority to represent the municipality externally may be granted to the district-board by local act.

(4) The district-boards have the duty of mediation between the district assemblies and the municipal authorities.

§ 26.

(1) Through concurrent resolution of the district assembly and the district-board, special district deputations may be elected, either from the members of the two district authorities, or from the latter and from the citizens qualified to vote, for the permanent administration or supervision of particular branches of the service as well as for the discharge of temporary duties. To these deputations, which are subordinated to the district-board under all circumstances, the municipal deputies, district deputies, and enfranchised citizens shall be elected by the district assembly; the district bürgermeister shall appoint the members of the district-board, and shall also choose the chairman from them; by local act the right to represent the municipality externally may be extended to the district deputations.

(2) The district-board has the duty of mediating between the district deputations and the municipal authorities.

§ 27.

The magistrat, in all cases, retains the power to restrain action under resolutions of the district assemblies, the district-boards and the district deputations, if the municipal interest urgently so requires, or if the resolutions of the district authorities exceed their competence, or violate the laws. The resolution whereby the magistrat restrains the carrying out of resolutions of the district assembly shall state the reasons for the veto.

§ 28.

(1) If, under § 27, no agreement is reached, any of the parties concerned may, within two weeks after the day on which the veto was announced, appeal to a board of arbitration, which shall decide definitively.

(2) The board of arbitration shall consist of two members elected by the municipal assembly and two elected by the district assembly, to whom an umpire, elected by them, shall be added as chairman. If no agreement regarding the umpire is reached, he shall be appointed by the Oberpräsident.

(3) In all other respects, the composition of the board of arbitration and its procedure shall be regulated by joint-resolution, subject to the principle that a district affected by the veto must be represented in the board of arbitration at the decision in the case.

§ 29.

(1) A Verwaltungsbezirk may be divided into Ortsbezirke,¹ by concurrent resolution of the district assembly and the district-board, with the approval of the magistrat.

(2) A chairman² and a deputy shall be placed in charge of each Ortsbezirk, and shall be elected by the district assembly, for twelve years, if paid, otherwise for four years, subject to confirmation by the district-board. By concurrent resolution of the district assembly and the district-board the chairmen in the more important Ortsbezirke, may be given the official title of Bürgermeister.

(3) The chairmen of the Ortsbezirke are under the supervision of the district-board, and have the duty of obeying its directions, and of assisting it concerning the local affairs of the Ortsbezirk.

(4) In addition to the chairmen of the Ortsbezirk, councillors³ may be chosen from the enfranchised citizens of the Ortsbezirk, by concurrent resolution of the district assembly and the district-board, and the approval of the magistrat; the resolution shall also make provision for the constitution and competence of the councillors. When councillors have been constituted, they have a right of nomination in the appointment of the chairmen of the Ortsbezirk. The councillors shall be elected by the enfranchised citizens of the Ortsbezirk according to the principles of proportional election.

(5) By concurrent motion of the district assembly and the district-board of a Verwaltungsbezirk, additional powers, particularly the power to represent the municipality externally, may be extended to the chairmen of the Ortsbezirke by local act.

. . . .⁴

98. Boroughs in the Greater New York Charter, 1901.

The charter of Greater New York presents a compromise between the municipal federalism of London and Berlin and the municipal centralization which exists in Paris, Chicago, and other large cities. Greater New York was formed by the union of New York, Brooklyn, certain

¹ Local districts or precincts.

² Ortsbezirksvorsteher.

³ Beiräte.

⁴ Further sections of the act provide for the continued existence of various special bodies (e.g., those dealing with police, poor relief, water-supply, and fire). Those dealing with police and poor relief are made coterminous with the City of Berlin.

territory north of New York in Westchester County, certain communities on Long Island north and east of Brooklyn, and Staten Island. The charter of 1897 provided for five boroughs. The island of Manhattan became the Borough of Manhattan, the old city of Brooklyn became the Borough of Brooklyn, the territory north of the Harlem River and south of the new Westchester County line became the Borough of the Bronx, the cities and towns on Long Island outside of Brooklyn became the Borough of Queens, and Staten Island, the Borough of Richmond. Each of these boroughs was permitted to elect a president and, by the charter of 1901, these borough presidents came to be members of the Board of Estimate and Apportionment.¹ The sections which follow describe the administrative powers of the borough presidents and the functions of local improvement boards. The borough president has more importance as a representative on the Board of Estimate and Apportionment than as an administrative officer of the borough. The borough functions performed under his direction are, however, of no mean importance. Nearly \$20,000,000 were appropriated for them by the budget of 1925. This was, however, only a little more than 7 per cent of the total current expense budget for the Greater city.

SOURCE—*Laws of the State of New York*, 1901 (Albany, 1901), Chap. 446, as amended by the *Laws* of 1918, Chap. 617; 1920, Chap. 443; 1921, Chap. 170 and Chap. 670; 1922, Chap. 474.

AN ACT To Amend the Greater New York Charter.

CHAPTER I.

BOUNDARIES, BOROUGHIS, POWERS, RIGHTS AND OBLIGATIONS OF THE CITY.

. . . .

Division into Boroughs.

Sec. 2. The City of New York as constituted by this act, is hereby divided into five boroughs to be designated respectively: Manhattan, The Bronx, Brooklyn, Queens and Richmond; . . .

¹ Cf. § 29.

CHAPTER IX.

BOROUGH OFFICERS.

TITLE I.

BOROUGH OFFICERS.

President; qualifications, term, election, salary.

Sec. 382.¹ There shall be a president of each borough, who must be a resident thereof at the time of his election and remain a resident thereof throughout his term of office. The president and his successors shall be elected by the electors of the borough at all the elections whereat the mayors of the city of New York are respectively to be elected. The president shall hold his office for a term of four years, commencing on the first day of January next after his election. The salary of the presidents of the boroughs of Manhattan, of the Bronx, of Brooklyn, of Queens and Richmond, respectively, shall be ten thousand dollars a year. A president of a borough may be removed in the same manner as the mayor, as provided in other sections of this act. Any vacancy in the office of president caused by removal from the borough, or otherwise, shall be filled for the unexpired term by an election to such vacancy made by a majority vote of all the members of the board of aldermen then in office representing said borough, and in case of any such vacancy it shall be the duty of the mayor forthwith to call such members in session for such an election and to preside thereat; but he shall not vote unless his vote be necessary to decide the election. . . .

President of borough; powers and duties.

Sec. 383.² The president of a borough shall, by virtue of his office, be a member of the local board of every district of local improvements in his borough, and chairman thereof, entitled to preside at its meetings and to vote as any other member. He shall have an office in such hall or public building of the borough as the board of aldermen may by resolution direct. He may appoint and at pleasure remove a commissioner of public works for his borough, who may discharge all the administrative powers of the

¹ As amended by *Laws* of 1920, Chap. 443.

² As amended by *Laws* of 1921, Chap. 170.

president of the borough relating to streets, sewers, public buildings and supplies conferred upon him by this act; and who shall, in the absence, or illness of such president discharge all the duties of such president. He may also appoint and remove an assistant commissioner of public works who may discharge such powers and perform such duties as may be in writing conferred upon him by said president of the borough. He shall have power to appoint a secretary, and such assistants, clerks and subordinates as he may deem necessary, if provision be made therefor by the board of estimate and apportionment and the board of aldermen. The said secretary, assistants, clerks and subordinates shall hold office at the pleasure of the president, subject to the provisions of the civil service laws. He shall, within the borough for which he shall have been elected, have cognizance and control:

1. Of regulating, grading, curbing, flagging and guttering of streets and laying of crosswalks.

2. Of constructing and repairing public roads.

3. Of paving, repaving, resurfacing and repairing of all streets, and of the relaying of all pavements removed for any cause.

4. Of the laying or relaying of surface railroad tracks in any public street or road, of the form of rail used, or character of foundation, and the method of construction, and of the restoration of the pavement or surface after such work.

5. Of the filling of sunken lots, fencing of vacant lots, digging down lots, and of licensing vaults under sidewalks.

6. Of the removal of incumbrances.

7. Of the issue of permits to builders and others to use or open the streets.

8. Of the construction and maintenance of all bridges and tunnels which are within his borough, and form a portion of the highways thereof, except such bridges as cross navigable streams and, in the borough of Manhattan, except certain viaducts which, by the provisions of section five hundred and ninety-five of this charter, are placed under the cognizance and control of the commission of plant and structures.

9. Of all subjects relating to the public sewers and drainage of his borough, and shall initiate the making of all plans for the drainage of his borough, except as otherwise specifically provided in this act. He shall have charge of the construction of all sewers in accordance with said plans. He shall have in charge the

management, care and maintenance of the sewer and drainage system of the borough of which he shall be president and the licensing of all cisterns and cesspools.

10. Of the construction, repairs, cleaning and maintenance of public buildings, including markets, except school houses, alms-houses, penitentiaries and the fire and police station houses, and other buildings whose care and custody are otherwise provided for in this act.

11. Of the care and cleaning of all offices leased or occupied for public uses.

12. Of the location, establishment, care, erection, and maintenance of the public baths, public urinals and public comfort stations; and of the placing of all signs indicating the names of the streets and other public places.

The president of each borough shall prepare all contracts relating to his borough, subject to the approval as to form by the corporation counsel. He shall have such other powers as are expressly conferred upon him by this act, and such other powers as may be conferred upon him by the board of aldermen. He shall make an annual report of the business and transactions of his borough to the mayor.

The presidents of the boroughs of Queens and Richmond shall, each for the borough of which he shall have been elected president, in addition to the powers above specified, have cognizance and control:

1. Of the sweeping and cleaning of the streets of the borough, and the removal or other disposition as often as the public health and the use of the streets may require, of ashes, street sweepings, garbage, and other light refuse and rubbish, and of the removal of snow and ice from leading thoroughfares and from such other streets as may be found practicable.

2. Of the framing of regulations controlling the use of sidewalks and gutters by abutting owners and occupants for the disposition of sweepings, refuse, garbage or light rubbish, within the borough which, when so framed, and approved by the board of aldermen, shall be published in like manner as city ordinances, and shall be enforced by the police department in the same manner and to the same extent as such ordinances, together with such other powers concerning street cleaning, as are expressly conferred upon them by this act.

3. The said presidents of the boroughs of Queens and Richmond shall have power to appoint such subordinates as may be necessary to enable them to carry into effect the provisions of this act regarding cleaning the streets of his borough, but the aggregate salaries of such officers shall not exceed in any one year the amount appropriated therefor by the board of estimate and apportionment and the board of aldermen. The said presidents of the boroughs of Queens and Richmond shall, so far as possible, select such subordinates from the members of the street cleaning department employed within said boroughs at the time when this act shall take effect. The said presidents of the boroughs of Queens and Richmond shall have such other powers relating to street cleaning within said boroughs as are conferred upon the commissioner of street cleaning by sections five hundred and forty-one, five hundred and forty-three, five hundred and forty-four and five hundred and forty-five of this act.

Whenever by any of the provisions of this act powers are conferred or duties are imposed upon a president of a borough, such powers may be exercised and such duties may be performed, upon the request of said president, by the commissioner of public works of said borough, if such official shall have been appointed; and if not, by any subordinate duly appointed by the president of said borough under the powers conferred upon him by this act, and duly designated thereto in writing; and such powers and duties when exercised or performed by such commissioner of public works or other appointee shall be regarded as having been exercised or performed by such president in the same manner as if such powers and duties had been actually exercised or performed by such president personally. . . .

Halls or buildings to be located in each borough.

Sec. 385. There may be a hall or public building or buildings in each borough, at which may be stationed deputies of such of the various administrative departments of the city government as may be authorized by the board of aldermen, for the greater convenience of the people of the city in the discharge of the duties thereof, provided such deputies or divisions shall be in all things as much a part of each department respectively, and as fully under the head thereof, as if the administrative force of said department were seated wholly in one building. . . .

TITLE 2.

BUREAU OF BUILDINGS.

Appointment of superintendents; qualifications; jurisdiction; salaries.

Sec. 405. There shall be in the office of each borough president a bureau to be known as "the bureau of buildings for the borough of ———." The presidents of the boroughs of Manhattan, The Bronx and Brooklyn shall, each within the borough for which he is elected appoint a superintendent of buildings for the borough. The presidents of the boroughs of Queens and Richmond may, whenever appropriation is made therefor by the board of aldermen upon the recommendation of the board of estimate and apportionment, each within the borough for which he is elected, in like manner appoint a superintendent of buildings for the borough. Every superintendent of buildings so appointed shall be a competent architect or builder of at least ten years experience. The president of a borough may, whenever in his judgment the public interests shall require, remove the superintendent of buildings of his borough. Every such superintendent shall hold office until his successor is appointed and has qualified. The salaries of the superintendents of buildings in the boroughs of Manhattan, The Bronx and Brooklyn shall, unless otherwise fixed as provided in this act, be five thousand dollars a year. The salary of the superintendent of buildings in the borough of Queens (if that office is created) shall, unless otherwise fixed as provided in this act, be three thousand five hundred dollars a year. The salary of the superintendent of buildings in the borough of Richmond (if that office is created) shall, unless otherwise fixed as provided in this act, be two thousand five hundred dollars a year. In case no superintendent of buildings is appointed by either the president of the borough of Queens or the president of the borough of Richmond, then the presidents of the said boroughs respectively shall each within the borough for which he has been elected, exercise all the powers and discharge all the duties of a superintendent of buildings for that borough. The words "superintendent of buildings" wherever used in the subsequent sections of this charter shall be taken and held to mean a superintendent of buildings for any borough lawfully appointed by the president thereof, under the preceding provisions of this section, or, in the case of the

boroughs of Queens and Richmond, the borough president in case he shall not have appointed a superintendent of buildings.

Duties of Superintendent; Appointment and Removal of Subordinates.

Sec. 406.¹ Each superintendent of buildings except as otherwise provided in this act, shall, within the borough in which he has jurisdiction have exclusive jurisdiction and charge, subject to and in accordance with the general rules and regulations to be established by the board of standards and appeals, of the construction, alteration, structural changes in and removal of buildings and other structures erected or to be erected within such borough, including sidewalk elevators, vaults, the coverings thereof and entrances thereto. . . . Each superintendent of buildings within the limits of his appropriation shall have the power to appoint subordinate officers, as follows: such chief inspectors of buildings, and such inspectors of buildings, engineers, clerks, messengers, assistants and other subordinates as in his judgment may be necessary and proper to carry out and enforce such rules and regulations and ordinances and the provisions of said laws and of this chapter within the borough under his jurisdiction.

. . . .

CHAPTER X.

CONTRACTS AND LOCAL IMPROVEMENTS.

TITLE II.

LOCAL BOARDS.

Districts for home rule and local improvements.

Section 425.² For the purpose of home rule and local improvements the territory of the city of New York is hereby divided into twenty-four districts of local improvements.

. . . .

The local board; how constituted, jurisdiction.

Sec. 426. There shall be in each and every district of local improvements a board of local improvements to be known and described as "the local board," to be intrusted with the powers by this act prescribed. The jurisdiction of each local board shall

¹ As amended by *Laws* of 1918, Chap. 617.

² As amended by *Laws* of 1921, Chap. 670. The act of 1901 created twenty-five districts.

be confined to the district for which it is constituted, and to those subjects or matters the costs and expenses whereof are in whole or in part a charge upon the people or property of the district or a part thereof, except so far as by this act jurisdiction may otherwise be given over matters of local administration within such district. Each local board shall consist of the president of the borough wherein the district is situated, by virtue of his office, and of each member of the board of aldermen who represents an aldermanic district within such local improvement district, by virtue of his office, and during his term as such member. The members of the local board shall serve as such members without compensation. If any proposed local improvement specified in section four hundred and twenty-eight of this act shall embrace the territory or affect the property of more than one district of local improvements, the members of the local boards of all the districts so affected shall, for all proceedings in the matter of such improvement, constitute the local board for the purposes thereof, and its proceedings shall in all respects conform to the provisions of this act that regulate the proceedings of any other local board. . . .

Id.; powers.

Sec. 428.¹ A local board, subject to the restrictions provided by this act, shall have power in all cases where the cost of the improvement is to be met in whole or in part by assessments upon the property benefited, to initiate proceedings for the following purposes; To construct tunnels and bridges lying wholly within the borough; to acquire title to land for parks and squares, streets, sewers, tunnels and bridges, and approaches, to bridges and tunnels; to open, close, extend, widen, grade, pave, regrade, repave and repair the streets, avenues and public places, and to construct sewers within the district; to flag and reflag, curb and recurb the sidewalks, and to relay crosswalks on such streets and avenues; to set or to reset street lamps; and to provide signs designating the names of the streets. . . . All resolutions affecting more than one local improvement district or the borough generally, shall be adopted only at a joint meeting of all the local boards of the borough, and by a majority of the members of said boards. The board of estimate and apportionment may also initiate proceedings for any of the purposes set forth in this section, without the action of any local board. . . .

¹As amended by *Laws of 1922, Chap. 474.*

Id.; further powers.

Sec. 429. A local board shall have power to hear complaints of nuisances in streets or avenues, or against disorderly houses, drinking saloons conducted in violation of the laws regulating the traffic in liquor, gambling houses or any other places or congregations violative of good order or of the laws of this state, or other matters or things concerning the peace, comfort, order and good government respecting any neighborhood within the district, or concerning the condition of the poor within the district, and to pass such resolutions concerning the same as may not be inconsistent with the powers of the board of aldermen or of the respective administrative departments of The City of New York, and to aid such board of aldermen and departments in the discharge of their duties respecting the good government of the said district. All resolutions passed under the authority of this section shall be submitted to the mayor; and if he shall within ten days thereafter declare the same to be general in character, they shall be invalid; otherwise, they shall take effect upon the expiration of said period of ten days.

Id.; meetings; secretary; quorum.

Sec. 430. Meetings of each local board shall be held at the main hall or public building of the borough. It shall be the duty of the president to call such meetings whenever in his opinion the public business shall require, or whenever he shall receive the written request of any three members of a local board. The secretary of the president of the borough shall act as the secretary of each local board in the borough, without additional compensation. He shall keep a record of all resolutions, proceedings and determinations of each local board, and shall file the same in the office of the president of the borough, and he shall discharge such other duties as may be prescribed by this act, or by the board of aldermen, or by the president of the borough, or by a local board. The president of a local board and one other member thereof shall constitute a quorum for the transaction of business at any meeting duly called.

. . . .

99. Massachusetts Metropolitan District, 1919.

The Massachusetts Metropolitan District Commission was formed by the union of the previously existing Metro-

politan Park Commission and the Metropolitan Water and Sewerage Boards. It has jurisdiction over a number of cities and towns surrounding and including the city of Boston. Its members are appointed by the governor of Massachusetts. The original commissions whose place it took were examples of the effort to solve the metropolitan problem by the establishment of *ad hoc* authorities as agents of the central government. The formation of the metropolitan district commission itself was a recognition on the part of the Massachusetts legislature of the necessity of unity in dealing with the problems of their metropolis. There has since been added to the commission a metropolitan planning division which has been very active in planning the development of the whole metropolitan area.

SOURCE—*General Acts passed by the General Court of Massachusetts, 1919* (Boston, 1919), Chap. 350, 431-433.

AN ACT TO ORGANIZE IN DEPARTMENTS THE EXECUTIVE AND ADMINISTRATIVE FUNCTIONS OF THE COMMONWEALTH.

Be it enacted, etc., as follows: . . .

PART IV.

20. THE METROPOLITAN DISTRICT COMMISSION.

Section 123. The metropolitan park commission, existing under authority of chapter four hundred and seven of the acts of eighteen hundred and ninety-three, and acts in amendment thereof and in addition thereto, and the metropolitan water and sewerage board, existing under authority of chapter one hundred and sixty-eight of the acts of nineteen hundred and one, and acts in amendment thereof and in addition thereto, are hereby abolished. All the rights, powers, duties and obligations of said boards are hereby transferred to and shall hereafter be exercised and performed by the metropolitan district commission established by this act, which shall be the lawful successor of said commission and board.

Section 124. The metropolitan district commission shall be under the supervision and control of a commissioner and four

associate commissioners, all of whom shall be appointed by the governor, with the advice and consent of the council. They shall at the time of their appointment be resident within the district of which the department has jurisdiction, and at least one shall be a resident of the city of Boston. The commissioner shall be appointed for the term of five years. Of the associate commissioners first appointed, one shall be appointed for the term of one year, one for two years, one for three years, and one for four years. Thereafter as the terms expire the governor shall appoint the commissioners for the term of five years, shall fill any vacancy for the unexpired term, and may, with the consent of the council, remove the commissioner or any associate commissioner.

Section 125. The commissioner shall be the executive and administrative head of the commission, and shall organize the commission in divisions and supervise the same as hereinafter provided. He shall receive such annual salary, not exceeding six thousand dollars, and the associate commissioners such annual salary, not exceeding one thousand dollars, as the governor and council may determine.

Section 126. The commission shall be organized in such divisions as the commissioner may from time to time determine, and the commissioner may, with the approval of the governor and council, appoint and remove a director of each division to have charge of the work of the division. The compensation of directors shall be fixed by the commissioners, with the approval of the governor and council. The commissioners may also appoint a secretary and engineering chiefs, and, subject to the civil service law and rules, where they apply, appoint a purchasing agent, engineers, inspectors, officers and members of the police force, clerks and such other officers and employees as the work of the commission may require; may assign them to divisions, transfer and remove them, and, subject to the provisions of chapter two hundred and twenty-eight of the General Acts of nineteen hundred and eighteen, and to the approval of the governor and council, where that is required by law, fix the compensation of the said persons.

Section 127. The commission shall have and exercise over the public property hereby transferred to its charge and control from the metropolitan water and sewerage board, in addition to the power and authority of said board, all the power and authority which the metropolitan park commission has over open spaces for exercise and recreation under chapter four hundred and seven of

the acts of eighteen hundred and ninety-three, and acts in amendment thereof and in addition thereto, so far as such power and authority may be exercised consistently with the purposes for which the metropolitan water and sewerage systems were created and are maintained.

Section 128. The police appointed or employed by the commission shall have within the metropolitan parks district, and within the cities and towns outside said district wherein any of the property of the metropolitan water and sewerage districts is situated, all the powers of police officers and constables of cities and towns of this commonwealth, except the power of serving and executing civil process, and when on duty may carry such weapons as the said commission shall authorize.

Section 129. The expense of maintenance of the metropolitan parks, boulevard, water and sewerage systems under the department shall be paid by the metropolitan parks, boulevard, water and sewerage districts, respectively, in the manner now provided by law: *provided, however*, that the expense each year of the salaries of the commissioners, and such other expense of maintenance of the general office and otherwise as they shall determine are not clearly or wholly incurred in the maintenance work of any one of said systems or districts, shall be paid as follows:—one fourth as the expense of maintenance of reservations under chapter four hundred and seven of the acts of eighteen hundred and ninety-three; one fourth as the expense of maintenance of boulevards under chapter two hundred and twenty-eight of the acts of eighteen hundred and ninety-four; one fourth as the expense of maintenance of the metropolitan water system; and one fourth as the expense of maintenance of the metropolitan sewerage system. . . .

100. New York Port Authority Compact, 1921.

For the purpose of solving certain of the problems connected with the Port of New York the states of New York and New Jersey entered into a compact, with the approval of the United States Congress. The jurisdiction of the Port Authority extends over 1,500 square miles and a population of eight millions. In view of the vast commercial and property interests with which it has to deal, it may be said to be the most important *ad hoc* authority in the world.

SOURCE—Port of New York Authority, *Port Authority Statutes* (New York, 1925), 1-13.

THE COMPACT BETWEEN THE STATES OF NEW YORK
AND NEW JERSEY BY WHICH THE PORT OF NEW
YORK DISTRICT AND THE PORT OF NEW YORK
AUTHORITY, WITH CERTAIN POWERS, WERE
CREATED.

WHEREAS, In the year eighteen hundred and thirty-four the states of New York and New Jersey did enter into an agreement fixing and determining the rights and obligations of the two states in and about the waters between the two states, especially in and about the bay of New York and the Hudson river; and

WHEREAS, Since that time the commerce of the port of New York has greatly developed and increased and the territory in and around the port has become commercially one center or district; and

WHEREAS, It is confidently believed that a better coördination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey; and

WHEREAS, The future development of such terminal, transportation and other facilities of commerce will require the expenditure of large sums of money and the cordial co-operation of the states of New York and New Jersey in the encouragement of the investment of capital, and in the formulation and execution of the necessary physical plans; and

WHEREAS, Such result can best be accomplished through the co-operation of the two states by and through a joint or common agency.

Now, therefore, The said states of New Jersey and New York do supplement and amend the existing agreement of eighteen hundred and thirty-four in the following respects:

ARTICLE I.

They agree to and pledge, each to the other, faithful co-operation in the future planning and development of the port of New York, holding in high trust for the benefit of the nation the special blessings and natural advantages thereof.

ARTICLE II.

To that end the two states do agree that there shall be created and they do hereby create a district to be known as the "Port of New York District" (for brevity hereinafter referred to as "The District") which shall embrace the territory bounded and described as follows: . . .

The boundaries of said district may be changed from time to time by the action of the legislature of either state concurred in by the legislature of the other.

ARTICLE III.

There is hereby created "The Port of New York Authority" (for brevity hereinafter referred to as the "Port Authority"), which shall be a body corporate and politic, having the powers and jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon it by the legislature of either state concurred in by the legislature of the other, or by act or acts of congress, as hereinafter provided.

ARTICLE IV.

The port authority shall consist of six commissioners—three resident voters from the state of New York, two of whom shall be resident voters of the city of New York, and three resident voters from the state of New Jersey, two of whom shall be resident voters within the New Jersey portion of the district, the New York members to be chosen by the state of New York and the New Jersey members by the state of New Jersey in the manner and for the terms fixed and determined from time to time by the legislature of each state respectively, except as herein provided.

Each commissioner may be removed or suspended from office as provided by the law of the state for which he shall be appointed.

ARTICLE V.

The commissioners shall, for the purpose of doing business, constitute a board and may adopt suitable by-laws for its management.

ARTICLE VI.

The port authority shall constitute a body, both corporate and politic, with full power and authority to purchase, construct, lease

and/or operate any terminal or transportation facility within said district; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it. No property now or hereafter vested in or held by either state, or by any county, city, borough, village, township or other municipality, shall be taken by the port authority, without the authority or consent of such state, county, city, borough, village, township or other municipality, nor shall anything herein impair or invalidate in any way any bonded indebtedness of such state, county, city, borough, village, township or other municipality, nor impair the provisions of law regulating the payment into sinking funds of revenues derived from municipal property, or dedicating the revenues derived from any municipal property to a specific purpose.

The powers granted in this article shall not be exercised by the port authority until the legislatures of both states shall have approved of a comprehensive plan for the development of the port as hereinafter provided.

ARTICLE VII.

The port authority shall have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other. Unless and until otherwise provided, it shall make an annual report to the legislature of both states, setting forth in detail the operations and transactions conducted by it pursuant to this agreement and any legislation thereunder. The port authority shall not pledge the credit of either state except by and with the authority of the legislature thereof.

ARTICLE VIII.

Unless and until otherwise provided, all laws now or hereafter vesting jurisdiction or control in the public service commission, or the public utilities commission, or like body, within each state respectively, shall apply to railroads and to any transportation, terminal or other facility owned, operated, leased or constructed by the port authority, with the same force and effect as if such railroad, or transportation, terminal or other facility were owned, leased, operated or constructed by a private corporation.

ARTICLE IX.

Nothing contained in this agreement shall impair the powers of any municipality to develop or improve port and terminal facilities.

ARTICLE X.

The legislatures of the two states, prior to the signing of this agreement, or thereafter as soon as may be practicable, will adopt a plan or plans for the comprehensive development of the port of New York.

ARTICLE XI.

The port authority shall from time to time make plans for the development of said district, supplementary to or amendatory of any plan theretofore adopted, and when such plans are duly approved by the legislatures of the two states, they shall be binding upon both states with the same force and effect as if incorporated in this agreement.

ARTICLE XII.

The port authority may from time to time make recommendations to the legislatures of the two states or to the congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the port of New York, the increase and improvement of transportation and terminal facilities therein, and the more economical and expeditious handling of such commerce.

ARTICLE XIII.

The port authority may petition any interstate commerce commission (or like body), public service commission, public utilities commission (or like body), or any other federal, municipal, state or local authority, administrative, judicial or legislative, having jurisdiction in the premises, after the adoption of the comprehensive plan as provided for in article X for the adoption and execution of any physical improvement, change in method, rate of transportation, system of handling freight, warehousing, docking, lightering or transfer of freight, which, in the opinion of the port authority, may be designed to improve or better the handling of

commerce in and through said district, or improve terminal and transportation facilities therein. It may intervene in any proceeding affecting the commerce of the port.

ARTICLE XIV.

The port authority shall elect from its number a chairman, vice-chairman, and may appoint such officers and employees as it may require for the performance of its duties, and shall fix and determine their qualifications and duties.

ARTICLE XV.

Unless and until the revenues from operations conducted by the port authority are adequate to meet all expenditures, the legislatures of the two states shall appropriate, in equal amounts, annually, for the salaries, office and other administrative expenses, such sum or sums as shall be recommended by the port authority and approved by the governors of the two states, but each state obligates itself hereunder only to the extent of one hundred thousand dollars in any one year.

ARTICLE XVI.

Unless and until otherwise determined by the action of the legislatures of the two states, no action of the port authority shall be binding unless taken at a meeting at which at least two members from each state are present and unless four votes are cast therefor, two from each state. Each state reserves the right hereafter to provide by law for the exercise of a veto power by the governor thereof over any action of any commissioner appointed therefrom.

ARTICLE XVII.

Unless and until otherwise determined by the action of the legislatures of the two states, the port authority shall not incur any obligations for salaries, office or other administrative expenses, within the provision of article XV, prior to the making of appropriations adequate to meet the same.

ARTICLE XVIII.

The port authority is hereby authorized to make suitable rules and regulations not inconsistent with the constitution of the United States or of either state, and subject to the exercise of the power of

congress, for the improvement of the conduct of navigation and commerce, which, when concurred in or authorized by the legislatures of both states, shall be binding and effective upon all persons and corporations affected thereby.

ARTICLE XIX.

The two states shall provide penalties for violations of any order, rule or regulation of the port authority, and for the manner of enforcing the same. . . .

IN WITNESS WHEREOF we have hereunto set our hands and seals under Chapter 154 of the Laws of 1921 of the State of New York and Chapter 151 of the Laws of 1921 of the State of New Jersey, this thirtieth day of April, 1921.¹

101. The Montreal Metropolitan Commission, 1921.

The Montreal Metropolitan Commission was created to make possible lending the credit of all the municipalities of the island of Montreal to some of the poorer ones which had become insolvent. Its powers, however, have so developed that it now has control of the borrowing powers of all the municipalities in the Montreal area except the city of Montreal itself. It has been given authority to construct a boulevard across the island of Montreal and there seems to be a general tendency to enlarge its powers. It has been successful in the administration of the finances of the district. It may be taken as an excellent example of an *ad hoc* authority existing as an agency of the municipalities affected.

SOURCE—*Statutes of the Province of Quebec*, 11 George V (Quebec, 1921), Chap. 140; with amendments enacted in 1922 (12 George V, Chap. 123, and 13 George V, Chap. 105), and in 1924 (14 George V, Chap. 107).

AN ACT to incorporate the Island of Montreal Metropolitan Commission

WHEREAS, while still preserving the autonomy of the municipalities on the Island of Montreal, it is expedient that a system of financial control by a central authority representative of such

¹ The compact is signed by the commissioners and attorneys general of the states of New York and New Jersey.

municipalities, including the city of Montreal, be established for the future;

Therefore His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. This act may be cited as the "Island of Montreal Metropolitan Commission Act."

2. A commission, hereinafter called "The Commission," is hereby created under the name of "The Island of Montreal Metropolitan Commission."¹ Its sphere of action, in relation to the matters hereinafter mentioned, shall extend to the following municipalities, to wit: The city of Montreal; the cities of Westmount, Outremont, Verdun, and Lachine; and the towns of St. Pierre, Lasalle, Hampstead, St. Laurent, Mount Royal, Montreal West, Montreal North, St. Michel, Montreal East, Pointe-aux-Trembles and Laval-de-Montreal.

3. Such Commission shall be composed of fifteen members, hereinafter called "Commissioners," of whom one shall represent the Department of Municipal Affairs of the Province of Quebec; eight shall represent the city of Montreal, one the city of Westmount, one the city of Outremont, one the city of Verdun, one the city of Lachine, one the towns of Lasalle, St. Pierre, Hampstead, Mount Royal, St. Laurent and Montreal West; and one the towns of Montreal North, St. Michel, Montreal East, Pointe-aux-Trembles and Laval-de-Montreal.

4. 1. The members of the Commission shall be appointed in the manner following:

a. The Commissioner representing the Department of Municipal Affairs of the Province of Quebec shall be appointed by the Lieutenant-Governor in Council. Such Commissioner shall have a right to take part in the deliberations, but he shall have no vote;

b. Seven shall be appointed by resolution of the Administrative Commission of the city of Montreal, within twenty days after the coming into force of this act,—who shall be chosen from amongst the members of the city council, and to whom shall be added, *ex officio*, the city comptroller.

Within twenty days after the first meeting of the Montreal

¹In 1922 the name of the commission was changed to "The Montreal Metropolitan Commission." (*Statutes of the Province of Quebec*, 13 George V, 1922, Chap. 105.)

city council elected under the act 11 George V, chapter 112, such seven members shall retire from office, and their successors shall be chosen from amongst the members of the council as then constituted, by an absolute majority of the members of the said council. If such council fail, either wholly or in part, to make such choice at such time, the Lieutenant-Governor in Council shall fill the vacancies by choosing commissioners from amongst the members of the said city council;

c. One shall be chosen by each of the four municipalities, following, to wit, Westmount, Outremont, Lachine and Verdun, by the vote of the absolute majority of each of the councils of the said municipalities at their first regular meeting or at a special meeting held within the twenty days from the coming into force of this act,—who shall be chosen from amongst the members of the city council of each such municipality respectively;

d. One by the municipalities of the towns of Lasalle, St. Pierre, Hampstead, Mount-Royal, St. Laurent and Montreal West. The council of each of the said municipalities, at its first regular meeting or at a special meeting held within the twenty days following the coming into force of this act, shall appoint a delegate to proceed with the election of such member of the Commission. The delegates so appointed shall meet in the city hall, in Montreal, during the thirty days following the coming into force of this act, upon convocation by written notice of five days given by the clerk of the city of Montreal by registered letter, and shall then and there choose such member by the majority of the delegates present. The omission by any municipality to appoint its delegate shall not prevent the making of the appointment. Such commissioner shall be chosen from amongst the members of the town council of one of such municipalities; . . .¹

2. Any commissioner, who is not appointed as stated in the foregoing paragraph within the delay thereby prescribed, shall be appointed by the Lieutenant-Governor in council; and, in such case, it shall not be necessary that the person appointed be a member of a municipal council.

5. Any other municipality on the island of Montreal, not subject to the action of the Commission, may, by resolution adopted by the absolute majority of the members of its council, declare

The same procedure is to be followed in the choice of a commissioner to represent the towns of Montreal North, St. Michel, Montreal East, Point-aux-Trembles, and Laval-de-Montreal.

that it submits to the action of the Commission. Such resolution must, before having any force or effect, be approved by the Lieutenant-Governor in Council, and it shall come into force counting from its publication in the *Quebec Official Gazette*.

6. Unless the commissioners chosen from amongst the members of the municipal councils be dismissed according to section 7 of this act, they shall remain in office as such, as well as the comptroller of the city of Montreal, during their term of office, and the others during good pleasure.

7. The appointment of the commissioners, except that of the President and the comptroller of the city of Montreal in his quality of commissioner, may be revoked at any time by the authority which made it.¹ . . .

9. In the event of a vacancy in the office of commissioner for any cause whatsoever, the replacement shall be effected in the manner prescribed in section 4 of this act, and, in every case, the date at which the vacancy occurred shall be substituted for the date of the coming into force of the said act for the purposes in connection with the computation of the delays. . . .

12. The office of commissioner shall be gratuitous, and the commissioners shall not be entitled to any indemnity for the expenses they may incur in the performance of their duties.²

13. The quorum of the Commission shall be eight members, and its decisions shall be taken by the majority of the members present.

14. At its first meeting, the Commission shall elect a president from among its members. . . .

15. The commission shall appoint a secretary-treasurer and provide for his remuneration.

Such secretary-treasurer shall keep the minutes of the Commission, and certify all the documents emanating therefrom, and shall perform all other duties assigned to him by the Commission.

16. The Commission shall appoint and employ the persons

¹As enacted in 1922, replacing Sec. 7 of the original charter. (*Statutes of the Province of Quebec*, 13 George V, 1922, Chap. 105.)

²Remuneration of the commission was authorized in 1922: "The commission shall have the right to order that the members of the commission shall be entitled to a remuneration of ten dollars for attendance at each sitting of the commission, and of five dollars for attendance at a committee meeting.

"The president of the commission shall have a right to an annual salary of two thousand dollars over and above his allowance for attending meetings of the commission and its committees." (*Statutes of the Province of Quebec*, 13 George V, 1922, Chap. 105.)

whom it may need and may dismiss them at will; it shall pay to each such person the remuneration which they deem suitable.

17. The Commission shall form a corporation. Besides the power which corporations have under the Civil Law, it may borrow and guarantee or become security for the loans, debts and obligations, contracted by each of the corporations affected by this act. It may also give and accept bonds for the payment or guarantee for the payment of any sum of money due by or to it.

18. No municipality subject to the action of the Commission, may contract a loan nor issue bonds unless it be specially authorized by a resolution of the Commission; but if a municipality obtain such authorization, the loan shall be subject to the provisions of the acts governing it. Such municipalities may, however, contract temporary loans in anticipation of the collection of their annual revenue, as well as the loans not yet effected but legally authorized before the coming into force of this act.

18a.¹ Instead of authorizing a municipality to contract a loan or renew a loan or to issue any bonds, the commission may, with the consent of such municipality, and without prejudice however to other borrowing powers already possessed by it, but subject to the provisions of the said act and of the present act, as regards the apportioning of the charges and expenses of the said commission, in connection with such loan, effect such loan in its own name, for the benefit and on behalf of such municipality, provided the formalities required by the law governing such municipality be observed.

Every loan so made by the commission shall be on the guarantee of the taxable immoveables of the municipalities submitted to its action, in proportion to the value of the taxable property of each of the said municipalities, and shall be subject to all the provisions of the law respecting the loans it is authorized to effect.

19. So soon as a municipality fails to meet its obligations without the help and credit of the Commission or of the other municipalities, and so long as such condition continues to exist, all loans for such municipality are made by the commission, subject to the provisions of sections 23 and 24 as to the assessment for such loans, and the budgets of such municipalities must be submitted to the Commission, who may approve the same with or without amendment, and so long as they are not approved they are

¹ *Statutes of the Province of Quebec*, 12 George V, 1922, Chap. 123.

ineffective; and, for such municipality, no expense can be incurred which has not been approved.

19a.¹ Whenever the Commission is of opinion that a loan should be made for any municipality assisted by it, such loan shall be made with the approval of the Lieutenant-Governor in Council, upon the recommendation of the Minister of Municipal Affairs, by the Commission in its name for the account of such municipality, without the latter being obliged to give its consent thereto nor to pass any by-law or take any other proceedings for that purpose. By its resolution authorizing such loan, the Commission must impose upon the taxable property of such municipality a special tax sufficient to pay the annual interest and the contribution to the sinking-fund. For such municipality, the resolution of the Commission shall be obligatory and effect must be given thereto.

20. The Commission may, of its own initiative, effect loans upon the security of the taxable immovable property of each of the municipalities mentioned in section 2, in proportion to the value of the taxable immovable property in each of such municipalities respectively: (a) in anticipation of its revenues; (b) for renewing the loans that have become due to each of the municipalities mentioned in this act, when the said municipalities have not sufficient money for paying them, of which it shall be the sole judge; (c) for meeting floating debts, deficits in the budget and other obligations of each of the said municipalities.

If necessary, to avoid or stop judicial proceedings due to the incapacity of a municipality to meet its obligations, the commission shall exercise borrowing powers. . . .

24.² The commission shall apportion among all the various municipalities subject to its action, in proportion to the value of the taxable property of each of the said municipalities the expenses of its administration and all other expenses or charges which are not for the benefit of a single municipality.

24a.² The share of the expenses or charges apportioned upon a municipality which the commission considers unable to pay—of which it shall be the sole judge—shall be the object of a supplementary apportionment on the municipalities which are able to pay, but, in such case, the amount paid by one municipality under a

¹ *Statutes of the Province of Quebec*, 14 George V, 1924, Chap. 107.

² Sections 24 and 24a, enacted in 1922, replace Section 24 of the original charter. *Statutes of the Province of Quebec*, 12 George V, 1922, Chap. 123.

supplementary apportionment shall constitute a claim in favor of the said municipality against the municipality or municipalities which were obliged to pay, and it shall be repaid with interest as soon as the commission deems it possible.

Any supplementary apportionment may form part of the general apportionment or form part of a separate apportionment.

. . . .

27. The loans made or authorized by by-laws in force prior to the coming into force of this act, shall remain under the control of the municipalities, save that if, at any time, the Commission finds that the interest of any such loan has not been paid at maturity or that the sinking-fund has not been punctually maintained, after a notification of thirty days by the Commission to the municipality in default, if the latter continue to not fulfil its obligations, such loan shall automatically pass under the control of the Commission as if such loan had been made by the Commission for the benefit of the municipality in default, and the officers of the municipality shall forthwith hand over to the Provincial Treasurer the amount to the credit of the sinking-fund for such loans.

28. The Commission may, for the purpose of exercising the powers conferred upon it by this act, investigate in every way it deems fit, the financial condition of the municipalities submitted to its authority or any other facts the knowledge whereof may aid it in the execution of its functions, and, for such purpose, it shall have access, by its delegates, to the books and other documents of the municipalities. . . .

31. Save as to its responsibility as being jointly obligated with the other municipalities under the control of the Commission, for the expenses incurred and debts contracted by the latter, the city of Montreal is not submitted to its control, and the jurisdiction and powers of the said city shall not be affected by this act.

. . . .

AMENDMENTS OF 1922.¹

10. The commission itself may appoint, for any municipality subject to its authority, which does not honor its obligations without the help or credit of the commission or of the other municipalities, an inspector whose selection shall be approved by the Minister

¹ An Act to amend the charter of the Island of Montreal Commission. *Statutes of the Province of Quebec*, 12 George V, 1922, Chap. 123.

of Municipal Affairs and whose salary, fixed by the commission, shall be paid by such municipality, as an ordinary expense of administration, and whose duty shall consist in supervising the administration, the expenditure of money and the works of such municipality. When the inspector has been appointed, no expense shall be incurred by such municipality before the issue by such inspector of a certificate that there are funds available, voted for such purpose, and no payment shall be made without the approval of the inspector.

Every officer or councillor of such municipality, who authorizes an expenditure of money or a payment without the authorization of the commission, when such authorization is required, or contrary to the preceding paragraph, or allows or authorizes the money intended for the sinking fund to be used for other purposes, shall be personally responsible for the expenditure so authorized or paid, or of the sum of money so diverted, and may, in addition, be deprived of his office by legal action by the commission.

11.¹ The appointment or the dismissal of any employee or officer of a municipality assisted by the Commission shall be without effect unless it be approved by the Commission, which shall alone have the right to fix the salary and the term of engagement.

The Commission shall have the power to dismiss any such employee or officer at any time. It shall have the same power with respect to the employees or officers in office at the date of the coming into force of this act.

The Commission may, by a resolution forwarded to such municipality, reserve to itself the exclusive power of appointing, dismissing and replacing such officers or employees. . . .

15. Twenty-five per cent in number and in value of the owners of real property of a municipality or part of a municipality, subject to the commission's action, may, by a petition, ask the council of the said municipality, that the question of the annexation of such municipality or part of a municipality, to the city of Montreal, be submitted to the vote of the proprietors of such municipality or part of such municipality.

Then the council of the said municipality shall, within sixty days from the production of the said petition, proceed, in accordance with the provisions of the law regarding such municipality, to take a vote of the said proprietors on such question. In default of

¹As replaced by an amendment in 1924. *Statutes of the Province of Quebec*, 1924, 14 George V, Chap. 107.

the said council, so proceeding and with diligence, the Island of Montreal Metropolitan Commission shall substitute itself for it, and for such purpose shall exercise all its powers.

If the majority in number and in value of the said proprietors pronounce in favor of the annexation and if the city of Montreal consents thereto, such annexation may be effected on the conditions that may be agreed upon between the city of Montreal and the council of the municipality which demands the annexation.

....

AMENDMENTS OF 1924.¹

....

5. All municipal work in the municipalities assisted by the Commission shall be done under the control and direction of the latter, and no contract for work may be given by any such municipality without the previous approval of the Commission; without such approval, such contract shall be of no effect.

....

9. It shall be for the Commission to fix each year the rate and amount of the taxes, permits or licenses to be imposed and levied each year in every municipality assisted by it. Upon failure by such municipality to impose the taxes, permits or licenses according to the rate and for the amount so fixed, within a delay of thirty days from the notice given to it by the Commission, the latter shall be substituted for such municipality, which may no longer act, and all the powers of such municipality with respect to the imposition and collection of the said taxes, permits or licenses shall belong to the Commission.

The Commission shall be likewise substituted, in the same manner and with the same effect, in the powers of any municipality assisted by it whenever the latter neglects or refuses, after a previous notice of thirty days which shall be given it by the Commission, to levy any special tax imposed by a loan by-law or any other by-law in force, or by a resolution of the Commission.

For such purposes the officers of the municipality shall be the officers of the Commission.

Whenever a municipality assisted by the Commission neglects or refuses to levy or collect the taxes due, within the delay fixed by the Commission, the latter may itself collect them, and for that

¹ An Act to amend the charter of the Montreal Metropolitan Commission. *Statutes of the Province of Quebec*, 14 George V, Chap. 107.

purpose may, in the name and at the cost of such municipality, institute any necessary judicial proceeding authorized by the charter of such municipality.

. . . .

14. Every plan or proposal for the opening or extension of a street or for the construction of a collecting sewer or of an aqueduct main pipe, in any municipality under the control of the Commission, whenever such street, sewer or pipe joins the territory of another municipality, must, prior to its execution, be approved by the Commission; otherwise it shall be without effect.

102. Chicago Sanitary District, 1889.

The Chicago Sanitary District was created to enable Chicago to divert its sewage from Lake Michigan, and by reversing the flow of the Chicago and Desplaines rivers, to carry the effluents ultimately into the Mississippi. To this end, it was necessary to construct a drainage canal and other large works. The district's governing body is elected at large by the people of the district. It is thus an entirely independent local government authority, operating over an area of 436 square miles, including numerous cities and villages.

SOURCE—*Laws of the State of Illinois passed by the Thirty-Sixth General Assembly, 1889* (Springfield, 1889), 126-137.

AN ACT to create sanitary districts, and to remove obstructions in the Des Plaines and Illinois rivers.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* That whenever any area of contiguous territory within the limits of a single county shall contain two or more incorporated cities, towns or villages, and shall be so situated that the maintenance of a common outlet for the drainage thereof will conduce to the preservation of the public health, the same may be incorporated as a sanitary district under this act, in the manner following: Any 5,000 legal voters resident within the limits of such proposed sanitary district may petition the county judge of the county in which they reside, to cause the question to be submitted to the legal voters of such proposed district

whether they will organize as a sanitary district under this act. Such petition shall be addressed to the county judge, and shall contain a definite description of the territory intended to be embraced in such district, and the name of such proposed sanitary district: *Provided, however,* that no territory shall be included in any municipal corporation formed hereunder which is not situated within the limits of a city, incorporated town or village, or within three miles thereof, and no territory shall be included within more than one sanitary district under this act. Upon the filing of such petition in the office of the county clerk of the county in which such territory is situated, it shall be the duty of the county judge to call to his assistance two judges of the circuit court, and such judges shall constitute a board of commissioners which shall have power and authority to consider the boundaries of any such proposed sanitary district, whether the same shall be described in such petition or otherwise. Notice shall be given by such county judge of the time and place where such commissioners will meet, by a publication inserted in one or more daily papers published in such county at least twenty days prior to such meeting. At such meeting, the county judge shall preside, and all persons in such proposed sanitary district shall have an opportunity to be heard touching the location and boundary of such proposed district and make suggestions regarding the same, and such commissioners, after hearing statements, evidence and suggestions, shall fix and determine the limits and boundaries of such proposed district, and for that purpose and to that extent, may alter and amend such petition. After such determination by said commissioners, or a majority of them, the county judge shall submit to the legal voters of the proposed sanitary district the question of the organization and establishment of the proposed sanitary district, as determined by said commissioners at an election to be held on the first Tuesday after the first Monday in November thence next ensuing, notice whereof shall be given by said commissioners, at least twenty days prior thereto, by publication in one or more daily papers published within such proposed sanitary district, such notice to specify briefly the purpose of such election, with a description of such proposed district. Each legal voter resident within such proposed sanitary district shall have the right to cast a ballot at such election, with the words thereon, "For Sanitary District," or "Against Sanitary District." The ballots so cast shall be received, returned and canvassed in the same manner and by the same officers as is provided by law in the

case of ballots cast for county officers. The county judge shall cause a statement of the result of such election to be spread upon the records of the county court. If a majority of the votes cast upon the question of the incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed district shall thenceforth be deemed an organized sanitary district under this act. . . .

§ 3. In each sanitary district organized under this act, there shall be elected nine trustees who shall hold their offices for five years, and until their successors are elected and qualified, except the term of office of the first trustees elected, shall be until five years after the first Monday in December after their election. The election of trustees, after the first, shall be on the Tuesday next after the first Monday in November, in every fifth year. In all elections for trustees, each qualified voter may vote for as many candidates as there are trustees to be elected, or he may distribute his vote among not less than five-ninths of the candidates to be elected, giving to each of the candidates among whom he distributes the same, the same number of votes or fractional parts of votes. The trustees shall choose one of their number president, and such sanitary district shall, from the time of the first election held by it under this act, be construed in law and equity a body corporate and politic and by the name and style of the sanitary district of . . . , and by such name and style may sue and be sued, contract and be contracted with, acquire and hold real estate and personal property necessary for corporate purposes, and adopt a common seal and alter the same at pleasure.

§ 4. The trustees elected in pursuance of the foregoing provisions of this act shall constitute a board of trustees for the district by which they are elected, which board of trustees is hereby declared to be the corporate authorities of such sanitary district, and shall exercise all the powers and manage and control all the affairs and property of such district. Said board of trustees shall have the right to elect a clerk, treasurer, chief engineer and attorney for such municipality, who shall hold their respective offices during the pleasure of the board, and who shall give such bond as may be required by said board. Said board may prescribe the duties and fix the compensation of all the officers and employes of said sanitary district: *Provided, however,* that the salary of the president of said board of trustees shall in no case exceed the sum of four thousand dollars per annum; and the salary of the other members of said

board shall not exceed three thousand dollars per annum: *And, provided further*, that the amount received by any attorney shall not exceed the sum of five thousand dollars (\$5,000) per annum. Said board of trustees shall have full power to pass all necessary ordinances, rules and regulations for the proper management and conduct of the business of said board of trustees and of said corporation and for carrying into effect the objects for which such sanitary district is formed. . . .

§ 7. The board of trustees of any sanitary district organized under this act shall have power to provide for the drainage of such district by laying out, establishing, constructing and maintaining one or more main channels, drains, ditches and outlets for carrying off and disposing of the drainage (including the sewage) of such district, together with such adjuncts and additions thereto as may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed in a satisfactory manner; also to make and establish docks adjacent to any navigable channel made under the provisions hereof for drainage purposes, and to lease, manage and control such docks, and also to control and dispose of any water-power which may be incidentally created in the construction and use of said channels or outlets, but in no case shall said board have any power to control water after it passes beyond its channel, waterways, races or structures into a river or natural waterway or channel, or water-power, or docks, situated on such river or natural waterway or channel: *Provided, however*, nothing in this act shall be construed to abridge or prevent the State from hereafter requiring a portion of the funds derived from such water power, dockage or wharfage to be paid into the State Treasury to be used for State purposes. Such channels or outlets may extend outside the territory included within such sanitary district, and the rights and powers of said board of trustees over the portion of such channel or outlet lying outside of such district shall be the same as those vested in said board over that portion of such channels or outlets within the said district. . . .¹

§ 9. The corporation may borrow money for corporate purposes, and may issue bonds therefor, but shall not become indebted, in any manner or for any purpose, to an amount in the aggregate to exceed five per centum on the valuation of taxable property therein, to be ascertained by the last assessment for state and county

¹Section 8 authorizes the acquisition of property by the sanitary district, by purchase or by exercise of the right of eminent domain.

taxes previous to the incurring of such indebtedness: *Provided, however,* that said five per centum shall not exceed the sum of fifteen million dollars (\$15,000,000).

§ 10. At the time or before incurring any indebtedness, the board of trustees shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof as the same shall fall due, and at least within twenty years from the time of contracting the same: *Provided,* that the net earnings from water-power and docks may be appropriated and applied to the purpose of paying the interest or principal of such indebtedness or both, and to the extent that they will suffice, the direct tax may be remitted. . . .

§ 12. The board of trustees may levy and collect taxes for corporate purposes upon property within the territorial limits of such sanitary district, the aggregate amount of which in any one year shall not exceed one-half of one per centum of the value of the taxable property within the corporate limits, as the same shall be assessed and equalized for state and county taxes of the year in which the levy is made. Said board shall cause the amount required to be raised by taxation in each year to be certified by the county clerk, on or before the second Tuesday in August, provided in section one hundred and twenty-two of the general revenue law. All taxes so levied and certified shall be collected and enforced in the same manner and by the same officers as state and county taxes, and shall be paid over by the officer collecting the same to the treasurer of the sanitary district, in the manner and at the time provided by the general revenue law.

§ 13. The board of trustees shall have power to defray the expenses of any improvement made by it in the execution of the powers hereby granted to such incorporation, by special assessment, or by general taxation, or partly by special assessment and partly by general taxation, as they shall by ordinance prescribe.

. . . .

§ 25. Any district formed hereunder shall have the right to permit territory lying outside its limits and within the same county to drain into and use any channel or drain made by it, upon such payments, terms and conditions as may be mutually agreed upon, and any district formed hereunder is hereby given full power and authority to contract for the right to use any drain or channel which may be made by any other sanitary district, upon such terms

as may be mutually agreed upon, and to raise the money called for by any such contract in the same way and to the same extent as such district is authorized to raise money for any other corporate purposes: . . . *Provided*, nothing in this act shall in any wise be so construed as to diminish, impair or remove any right or rights of any city, village, township or corporation, body politic or individual situated on the Des Plaines or Illinois rivers or their tributaries within the valleys of the same to use the channel for drainage or otherwise not inconsistent with the rights of the district constructing the same as expressed in this act.

§ 26. Whenever in any such sanitary district there shall be a city, incorporated town or village, which owns a system of waterworks and supplies water from a lake or other source which will be saved and preserved from sewage pollution, by the construction of the main channel, drain, ditch, or outlet herein provided for; and the turning of the sewage, of such city and district therein, and there shall be in such sanitary district, any territory bordering on any such city, incorporated town or village, within the limits of another city, incorporated town or village, which does not own any system or waterworks, at the time of the creation of such sanitary district, then upon application by the corporate authorities of such latter named city, incorporated town or village, the corporate authorities of such city, incorporated town or village, having such system of waterworks shall furnish water at the boundary line between such municipalities by means of its waterworks to the corporate authorities asking for the same in such quantities as may be required to supply consumers within said territory, at no greater price or charge than it charges and collects of consumers within its limits for water furnished through meters in like large quantities.

. . . .

103. California Public Utilities District Act, 1921.

This is a statute under which a municipality and an unincorporated territory, or two or more municipalities, may unite for the purpose of constructing and carrying on public utilities. One such public utility district has been formed on the east side of San Francisco Bay. The governing body of the district is in the hands of five directors elected by wards. This again is an instance of the creation

of an independent unit of local government owing no responsibility except to the people of the district as a whole.¹

SOURCE—*Statutes of California, 1921* (San Francisco, 1921), Chap. 218.

An act to provide for the organization, incorporation, and government of municipal utility districts, authorizing such districts to incur bonded indebtedness for the acquisition and construction of works and property, and to levy and collect taxes to pay the principal and interest thereon.

SECTION 1. A municipal utility district may be created as herein provided and when so created may exercise the powers herein granted. Any municipality together with unincorporated territory may so organize and incorporate; likewise any two or more municipalities, whether contiguous or otherwise or in the same or different counties, may organize and incorporate as a municipal utility district. Unincorporated territory may be embraced and included therein, but no municipality or election precinct shall be divided in the formation of such a district, nor shall any municipality or unincorporated territory be included therein without the consent of a majority of the electors thereof voting at any election on such proposition. Unincorporated territory in separated parcels and not contiguous, shall be considered separately in the organization of a district.

SEC. 2. The procedure for organizing and creating a municipal utility district under the provisions of this act is as follows:

Resolutions shall first be passed by the legislative bodies of half or more of the municipalities designed to be included in the proposed district, declaring that in their opinion public interest or necessity demands the creation and maintenance of a municipal utility district to be known as "the (giving the name) municipal utility district." Said resolutions may state the kind of utility proposed to be first acquired, but failure to acquire such utility shall not affect the validity of the district. They shall describe the exterior boundaries of the proposed district, provided that if it is intended to organize said district of incorporated municipalities only, then and in that case a statement of the names of such municipalities shall constitute a sufficient description of said district.

¹ Another type of *ad hoc* authority, that in which at least a part of the members of the governing body are chosen by the persons most directly interested in the services furnished by the authority, is illustrated by the Port of London Authority, described in § 96.

Certified copies of said resolutions shall be presented to the board of supervisors of the county containing the largest number of registered electors within the proposed district requesting said board to call an election without delay for determining whether such district shall be created.

Instead of said resolutions, a petition may be presented to the board of supervisors of said county signed by qualified electors within the boundaries of said district equal in number to at least ten per cent of the total vote cast at the last general state election within the territory proposed to be included in said district. Said petition shall contain substantially the same declarations and statements required to be contained in the resolutions aforementioned, and declare that, in the opinion of the petitioners, public interest or necessity demands the creation and maintenance of a municipal utility district. Such petition may be on separate papers, but each paper shall contain the affidavit of the party who circulated it certifying that each name signed thereto is the true signature of the person whose name it purports to be. The clerk of the board of supervisors of said county shall compare the signatures with the affidavits of registration and certify to the sufficiency or insufficiency of such petition.

SEC. 3. Upon receipt of certified copies of the resolutions aforementioned or of a sufficient petition as aforesaid, said board of supervisors shall call an election within the proposed district without delay for the purpose of determining whether the proposed district shall be created and established, also for the purpose of electing the first board of directors therefor in case the same is created.

SEC. 4. The government of every municipal utility district so created and established shall be vested in a board of five directors, one from each of the wards or subdistricts hereinafter mentioned, together with the other officers hereinafter mentioned. Said directors shall be residents and electors of the respective wards or subdistricts from which they are respectively nominated. They shall be elected at large, and every qualified elector in the proposed district may vote for all of the directors to be elected.

SEC. 5. Before calling said election the board of supervisors shall divide the proposed district into five wards or subdistricts, the boundaries of which shall be so drawn that each shall contain approximately an equal number of electors, as nearly as may be.

The municipalities and any other territory included in the proposed district may be divided for the purpose of establishing the boundaries of said wards or subdistricts, provided no election precinct shall be divided therefor.

SEC. 6. . . .

(e) Any municipality not in said district at the time of its creation, may subsequently be annexed thereto in the manner following: . . .

(f) Nothing herein contained shall be deemed to authorize or empower the board of directors of the district to interfere with or exercise any control over any existing utility owned and operated by any municipality in said district unless by consent of the city council of such municipality and upon such terms as may be mutually agreed upon between the board of directors of the district and said city council.

SEC. 7. All subsequent elections shall be called, held and conducted, and the returns thereof canvassed and result thereof ascertained, determined and declared by the board of directors of said district.

Of the directors elected at the next general state election following the election at which the district is created, those three elected by the highest vote shall hold office for four years, and the other two for two years. Thereafter at each biennial general election provided for under section one thousand forty-one of the Political Code a number of directors corresponding to the number whose term of office expires shall be elected for the term of four years.

SEC. 8. The board of directors shall have authority to fix the boundaries of the wards or sub-districts for the purpose of electing directors therefrom, after the first election creating and establishing the district.

The board of directors may provide by ordinance that each of its members shall receive for each attendance at the meetings of the board the sum of ten dollars. They shall not receive any other compensation, and no director shall receive pay for more than two meetings in any one calendar month.

SEC. 9. The board of directors shall choose one of its members president, and shall provide for the time and place of holding its meetings, which shall be held at least once each month. All legislative sessions of the board of directors, whether regular or

special, shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

SEC. 10. The board of directors shall act only by ordinance or resolution, and shall fill all vacancies on the board caused by the death or resignation of a member. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the members of the board. The enacting clause of all ordinances passed by the board shall be in these words:

“Be it enacted by the board of directors of . . . municipal utility district:”

All ordinances shall be signed by the president of the board of directors and attested by the secretary.

No ordinance passed by the board shall take effect within less than thirty days after its passage, and before the expiration of the said thirty days the same shall be published with the names of the members voting for and against the same for at least one week in some newspaper of general circulation printed and published in the district.

SEC. 11. The board of directors shall constitute the legislative body of said district and shall determine all questions of policy. Said board may appoint a general manager, an accountant who shall be ex officio secretary of the board of directors, a treasurer and an attorney, and fix their compensation. Said appointed officials shall hold office during the pleasure of said board and give such bonds and in such amounts as the board of directors may require. The board of directors shall supervise and regulate every utility owned and operated by the district, including the fixing of rates, rentals, charges and classifications, and the making and enforcement of rules, regulations, contracts, practices and schedules, for or in connection with any service, product or commodity owned or controlled by said district.

SEC. 12. Any municipal utility district incorporated as herein provided shall have power:

First—To have perpetual succession.

Second—To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

Third—To adopt a seal and alter it at pleasure.

Fourth—To take by grant, purchase, gift, devise, or lease, or otherwise acquire, and to hold and enjoy, and to lease or dispose

of, real and personal property of every kind within or without the district, necessary to the full or convenient exercise of its powers.

Fifth—To acquire, construct, own, operate, control or use, within or without, or partly within and partly without, the district, works for supplying the inhabitants of said district and municipalities therein, without preference to such municipalities, with light, water, power, heat, transportation, telephone service, or other means of communication, or means for the disposition of garbage, sewage, or refuse matter; and to do all things necessary or convenient to the full exercise of the powers herein granted; also to purchase any of the commodities or services aforementioned from any other utility district, municipality or private company, and distribute the same. Whenever there is a surplus of water, light, heat, or power above that which may be required by such inhabitants or municipalities within the district, such district shall have power to sell or otherwise dispose of such surplus outside of the district to persons, firms, and public or private corporations, or municipalities outside said district.

Sixth—To have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. To take any property necessary or convenient to the exercise of the powers herein granted, whether such property be already devoted to the same use or otherwise. In the proceedings relative to the exercise of such right the district shall have the same rights, powers and privileges as a municipal corporation.

Seventh—To construct works across or along any street or public highway, or over any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state, and to construct its works across any stream of water or water course. The district shall restore any such street or highway to its former state as near as may be, and shall not use the same in a manner to unnecessarily impair its usefulness.

Eighth—To borrow money and incur indebtedness, and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness that may exist against the district; *provided*, no indebtedness shall be incurred exceeding the ordinary annual income and revenue of the district without the approval of a two-thirds vote of the electors voting on the proposition to incur such indebtedness.

Ninth—To levy and collect, or cause to be levied and collected, taxes for the purpose of carrying on the operations and paying the obligations of the district.

Tenth—To make contracts, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers herein in this act granted.

Eleventh—To proceed in the name of the district in case of condemnation proceedings.

SEC. 13. The general manager shall have full charge and control of the construction of the works of said district and of their maintenance and operation, also of the administration of the business affairs of said district. He need not be a resident of the State of California at the time of his appointment. His salary shall be fixed by the board of directors. The powers of the general manager shall be:

- (a) To see that all ordinances of the district are enforced;
- (b) To appoint or hire, except as otherwise provided herein, all heads of departments, subordinate officials and employees necessary for the administration of the affairs of said district, and to remove the same;
- (c) To act as purchasing agent for all the departments of said district;
- (d) To attend all meetings of the board of directors and submit a general report of the affairs of the district;
- (e) To keep the directors advised as to the needs of the district;
- (f) To prepare or cause to be prepared, all plans, specifications, etc., for the construction of the works of said district;
- (g) To devote his entire time to the business of the district;
- (h) To perform such other and additional duties as the board of directors may require.

The general manager, in January of each year, shall render and immediately cause to be published a verified statement of the financial condition of the district, showing particularly the receipts and disbursements of the last preceding year, together with the source of such receipts and the purpose of such disbursements. Said publication shall be made at least once a week for two weeks in some newspaper of general circulation printed and published in the district, or, if there be no such newspaper in the district, then within some newspaper of general circulation printed and published in the county where such district is situated.

All other things being equal, the board of directors shall appoint as general manager some person who has had experience in municipal engineering or in the construction or management of public utilities.

SEC. 14. The accountant shall install and maintain a system of auditing and accounting which shall completely and at all times show the financial condition of the district. He shall draw all warrants for the payment of demands against the district when the same have been approved by the general manager and the board of directors. He shall perform such other duties as the board may require.

The treasurer shall be the custodian of the funds of the district and shall make payments only upon warrants duly and regularly signed by the president of the board of directors and attested by the secretary. He shall keep an account of all receipts and disbursements.

The attorney shall be one who has been duly admitted to practise law with the supreme court of the state and shall have been actively engaged in the practise of his profession for the period of at least three years next preceding his appointment. It shall be his duty to take charge of all suits and other legal matters to which the district is a party or in which it may be legally interested. He shall be in attendance at each meeting of the board of directors and shall give his advice or opinion in writing whenever required by said board. He shall be the legal adviser of the manager and other district officers and shall prepare and approve the forms of all ordinances, resolutions, contracts, bonds and other legal documents connected with the business of the district. He shall perform such other and additional services as the directors may require.¹

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¹ The remaining sections of the statute (15-27) govern the method of exercising the powers conferred upon the district. Section 25 provides for the recall of all elective officers of the district.

PART XIII

HOW THE CITY CONDUCTS ITS BUSINESS

104. Rules of Procedure of the Chicago City Council.

Many of the more important points of council procedure are usually prescribed in the city charter. The council, however, is permitted to make its own rules and to provide for its own internal organization so far as its rules and organization do not conflict with charter provisions. Council rules usually cover such matters as order of business, precedence of motion, previous question, and the appointment and duties of committees.

SOURCE—*Journal of the Proceedings of the City Council of the City of Chicago*, April 27, 1925, 24-30.

Resolved, That the rules hereinafter set forth shall be the rules of the City Council, including the assignments of Aldermen to membership on standing committees:

Convening of the Council; Quorum.

RULE 1. Each meeting of the Council shall convene at the time appointed for such meeting as provided by City Ordinance. In the absence of the Mayor a temporary chairman for the meeting shall be elected by a majority vote of the Aldermen present from amongst their members. The Clerk (or some one appointed to fill his place) shall thereupon immediately call the roll of members. If no quorum be present, the Council shall not thereby stand adjourned, but the members present shall be competent to adjourn the Council by a majority vote.

A quorum for the transaction of business shall consist of a majority of all the Aldermen entitled by law to be elected. When a quorum is present the Council shall proceed to the business before it, which shall be conducted in the following order:

Order of Business.

1. The reading of the Journal of the Proceedings of the last meeting or meetings and correction and approval of the same, unless dispensed with by the Council.
2. Reports and communications from city officers.
3. Reports of standing committees.
4. Reports of select committees.
5. Presentation of petitions, communications, resolutions and ordinances by Aldermen, and improvement ordinances recommended by the Board of Local Improvements.
6. Unfinished business of preceding meetings.
7. Miscellaneous business.

Questions Concerning Priority of Business.

RULE 2. All questions relating to the priority of business shall be decided by the Chair, without debate, subject to appeal.

Duties and Privileges of the President.

RULE 3. The presiding officer shall preserve order and decorum, and may speak to points of order in preference to other members, rising from his seat for that purpose, and shall decide all questions of order, subject to an appeal to the City Council, on which appeal no member shall speak more than once without the unanimous consent of the Council.

Duties and Privileges of Members.

RULE 4. While the presiding officer is putting the question, no member shall walk across or out of the Council room.

RULE 5. Every member, previous to his speaking, making a motion or seconding the same, shall rise from his seat and address himself to the presiding officer, and say, "Mr. President," but shall not proceed with his remarks until recognized and named by the Chair.

RULE 6. When two or more members rise at once, the presiding officer shall name the member who is first to speak.

RULE 7. During the session of the Council no one shall be admitted within the bar of the Council Chamber except representatives of the press, who shall occupy seats assigned to them, and such

city officials, ex-Aldermen and guests as the Mayor may invite to sit on the rostrum with him.

No person shall at any session or meeting of the members of the Council solicit any Alderman to vote for or against any person or proposition.

RULE 8. In case of any disturbance or disorderly conduct, the presiding officer shall have the power to require the Chamber to be cleared if necessary.

RULE 9. When a member wishes to present a communication, petition, order, resolution or other original matter, he shall send it to the desk of the Clerk, who shall read such matter when reached in its proper order; and the Clerk shall call each ward for the fifth order of business, beginning one meeting at the First Ward, and the next meeting at the Fiftieth Ward, and so on alternately during the term of the Council.

RULE 10. No member, without leave of the Council, shall speak more than once upon the same subject, until every member desirous of speaking shall have spoken; and no member shall speak longer than five minutes at any one time, except by consent of the Council.

RULE 11. A member when called to order by the Chair shall thereupon take his seat unless permitted by the Chair to explain. If there be no appeal, the decision of the Chair shall be conclusive; but, if the member appeal from the decision of the Chair, such appeal shall be decided by the Council.

RULE 12. While a member is speaking, no member shall hold any private discourse nor pass between the speaker and the Chair.

RULE 13. Every member who shall be present when a question is stated from the Chair shall vote thereon, unless excused by the Council, or unless he is directly interested in the question, in which case he shall not vote.

RULE 14. No member shall be allowed [to] leave the Council while in session unless excused by the presiding officer; and for attempting to do so, or for persistent violation of any other rule or order, may be restrained or otherwise dealt with as the President of the Council may direct.

Special Orders of Business.

RULE 15. Any matter before the Council may be set down as a special order of business at a time certain, if two-thirds of the Aldermen present vote in the affirmative, but not otherwise.

Motions Required to be Seconded.

RULE 16. No motion shall be put or debated unless it be seconded. When a motion is seconded, it shall be stated by the presiding officer before debate, and every such motion shall be reduced to writing, if required by a member, and the proposer of the motion shall be entitled to the floor.

Withdrawal of Motions.

RULE 17. After a motion or resolution is stated by the presiding officer, it shall be deemed to be in possession of the Council, but may be withdrawn at any time before decision or amendment, by consent of the Council.

Division of Questions.

RULE 18. If any question under consideration contains several distinct propositions, the Council by a majority vote of the members present may divide such question.

Record of Motions.

RULE 19. In all cases where a resolution or motion is entered on the Journal of the Council, the name of the member moving the same shall be entered also.

Taking and Entering of Votes.

RULE 20. If any member require it, the yeas and nays upon any question shall be taken and entered on the Journal; but the yeas and nays shall not be taken unless called for previous to any vote on the question.

Announcement and Changes of Votes.

RULE 21. The result of all votes by yeas and nays shall not be announced by the Clerk, but shall be handed by him to the Chairman for announcement, and no vote shall be changed after the tally list has passed from the hands of the Clerk.

Precedence of Questions.

RULE 22. When a blank is to be filled, and different sums or times proposed, the question shall be taken first on the least sum or the longest time.

RULE 23. When a question is under debate, the only motions in order shall be: 1, to adjourn to a day certain; 2, to adjourn; 3, to take a recess; 4, to lay on the table; 5, the previous question; 6, to refer; 7, to amend; 8, to substitute; 9, to postpone to a time certain; 10, to postpone indefinitely; Nos. 2, 4 and 5 to be decided without debate; such motions shall take precedence over each other in the order stated.

Adjournment.

RULE 24. A motion to adjourn the Council shall always be in order, except: 1, when a member is in possession of the floor; 2, while the yeas and nays are being called; 3, when the members are voting; 4, when adjournment was the last preceding motion; and, 5, when it has been decided that the previous question shall be taken.

RULE 25. A motion simply to adjourn shall not be subject to amendment, but a motion to adjourn to a time certain shall be, and shall be subject to debate.

RULE 26. The Council may at any time adjourn over one or more regular meetings, on a vote of a majority of all the Aldermen authorized by law to be elected.

Previous Question.

RULE 27. When the previous question is moved and seconded it shall be put in this form: "Shall the main question now be put?" If such question be carried, all further amendment and all further motions and debate shall be excluded, and the questions put without delay, upon the pending amendments in proper order, and then upon the main question.

Motions to Lay on the Table and Take from the Table.

RULE 28. A motion to simply lay a question on the table shall not be debatable; but a motion to lay on the table and publish, or any other condition, shall be subject to amendment and debate.

A motion to take any motion or other proposition from the table may be proposed at the same meeting at which such motion or proposition was laid upon the table, provided two-thirds of the Aldermen vote therefor.

RULE 29. A motion to lay any particular motion or proposition on the table shall apply to that motion or proposition only.

Indefinite Postponement.

RULE 30. When consideration of a motion or other proposition is postponed indefinitely, it shall not be taken up at the same meeting.

Motion to Refer.

RULE 31. A motion to refer to a standing committee shall take precedence over a similar motion to refer to a select committee.

Motion to Amend.

RULE 32. A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be entertained.

RULE 33. An amendment modifying the intention of a motion shall be in order; but an amendment relating to a different subject shall not be in order.

RULE 34. On an amendment to "Strike out and insert," the paragraph to be amended shall first be read as it stands, then the words proposed to be stricken out, then those to be inserted, and finally the paragraph as it will stand if so amended shall be read.

Motion to Substitute.

RULE 35. A substitute for any original proposition under debate may be entertained when further amendment is not admissible; and if accepted by the mover of such original proposition, or by the Council by vote, it shall entirely supersede such original proposition and cut off all amendments appertaining thereto.

Reconsideration.

RULE 36. A vote or question may be reconsidered at any time during the same meeting, or at the first regular meeting held thereafter. A motion for reconsideration, having been once made, and decided in the negative, shall not be renewed, nor shall a vote to reconsider be reconsidered.

RULE 37. A motion to reconsider must be made and seconded by members who voted on the prevailing side of the question to be reconsidered, unless otherwise provided by law; provided, however, that where a motion has received a majority vote in the affirmative, but is declared lost on account of a lack of sufficient affirmative

votes to adopt such motion, then a motion to reconsider may be made and seconded by those voting in the affirmative on such question to be reconsidered.

Resumption of Business after Adjournment.

RULE 38. The City Council shall at all regular meetings resume business at the same order on which it was engaged immediately preceding the last adjournment with the exceptions of orders, Nos. 1, 2, 3, 4 and 5 of Rule 2, which shall be called and disposed of before resuming business as herein provided.

Standing Committees.

RULE 39. The following shall be the standing committees of the City Council; the first-named Alderman on each committee being designated as chairman thereof:

1. Committee on Finance.
2. Committee on Local Transportation.
3. Committee on Local Industries, Streets and Alleys.
4. Committee on Railway Terminals.
5. Committee on Gas, Oil and Electric Light.
6. Committee on Buildings and Zoning.
7. Committee on Judiciary.
8. Committee on Schools, Fire and Civil Service.
9. Committee on Harbors, Wharves and Bridges.
10. Committee on Public Health.
11. Committee on Track Elevation.
12. Committee on Police and Municipal Institutions.
13. Committee on Efficiency, Economy and Rehabilitation.
14. Committee on City Planning, Parks and Athletics.
15. Committee on Committees and Rules.

The several standing committees shall be constituted until after the next election and installation of members of the succeeding City Council, as set out below. . . .

In the event of the inability of any member of the said Committee on Committees and Rules to serve on said committee by reason of death, resignation or otherwise, the alternate named opposite his name shall serve in his stead.

Jurisdiction of Committees.

RULE 40.

Committee on Finance:

The Committee on Finance shall have jurisdiction over all matters involving expenditure of moneys by the City or necessitating an appropriation therefor; all matters relating to finance and the revenue of the City; all matters relating to licenses and permits involving revenue, and all matters relating exclusively to the water supply, the fixing of compensation for private uses or special privileges in any street, alley, public dock, pier or other public ground, or providing for the vacation thereof, excepting franchises for public utilities. All proposed ordinances authorizing or granting private uses or special privileges in any street, alley, public dock, pier or public ground, or providing for the vacation thereof, excepting franchises for public utilities, shall be referred by the respective committees to which they have been referred for consideration, to the Committee on Finance, for the purpose of fixing the amount of compensation to be paid before such matters are reported to the Council by said committees.

Committee on Local Transportation:

The Committee on Local Transportation shall have jurisdiction over all matters relating to local transportation, street and elevated railroads, subways and all matters relating to the regulation of public utilities furnishing local transportation within the City, or to the granting of any franchises to such public utilities, and all matters relating to the regulation of vehicular traffic, taxicabs or motor-bus lines.

Committee on Local Industries, Streets and Alleys:

The Committee on Local Industries, Streets and Alleys shall have jurisdiction over applications for switch tracks or for street and alleys vacations where the property vacated is to be used for, or in connection with, any industry or public utility, and over all matters relating exclusively to streets and alleys, and to street nomenclature and to such street and alley vacations as are not herebefore named.

All orders, resolutions and ordinances introduced in the City Council for the opening or extending of streets or alleys shall, un-

less by unanimous consent, be referred to the Committee on Local Industries, Streets and Alleys.

Committee on Railway Terminals:

The Committee on Railway Terminals shall have jurisdiction over all matters relating to railway terminal facilities.

Committee on Gas, Oil and Electric Light:

The Committee on Gas, Oil and Electric Light shall have jurisdiction over all matters relating to gas, oil and electric light and telephone service and regulation and control of public utilities furnishing the same or the granting of any franchises thereto.

Committee on Buildings and Zoning:

The Committee on Buildings and Zoning shall have jurisdiction over all matters relating to buildings, zoning and housing, except those relating to buildings owned by the municipality.

Committee on Judiciary:

The Committee on Judiciary shall have jurisdiction over all matters relating exclusively to state legislation, to elections, and to the censure, suspension and expulsion of any member.

Committee on Schools, Fire and Civil Service:

The Committee on Schools, Fire and Civil Service shall have charge of all matters relating to the School System, the Fire Department and the Civil Service.

Committee on Harbors, Wharves and Bridges:

The Committee on Harbors, Wharves and Bridges shall have jurisdiction over all matters relating to harbors, wharves and bridges.

Committee on Public Health:

The Committee on Public Health shall have jurisdiction over all matters directly relating to the public health.

Committee on Track Elevation:

The Committee on Track Elevation shall have charge of all matters relating to the elevation of railroad tracks.

Committee on Police and Municipal Institutions:

The Committee on Police and Municipal Institutions shall have

jurisdiction over all matters relating to the Police Department, the Municipal Courts, and the regulation of Municipal Buildings.

Committee on Efficiency, Economy and Rehabilitation:

The Committee on Efficiency, Economy and Rehabilitation shall have jurisdiction over all matters relating to, bearing upon or affecting the following:

(a) Those affecting the basic organization of existing departments or important bureaus thereof.

(b) Those providing for the formation of new departments or new and important bureaus in existing departments.

(c) Those providing for the abolition of existing departments or important bureaus by consolidation, transfer or otherwise.

(d) Those covering questions common to more than one department or principal bureau and those covering conflict of jurisdiction and overlapping of activities of departments and bureaus.

(e) Those looking toward the simplification of the City's municipal government through the consolidation of existing taxing bodies or by other means.

Committee on City Planning, Parks and Athletics:

The Committee on City Planning, Parks and Athletics shall have jurisdiction over all matters relating to street widening (except street widenings in connection with railway terminal and river straightening matters or projects), parks, playgrounds, recreation piers, bathing beaches, athletic fields, billiard halls or rooms, athletic contests or exhibitions, and the formulation of rules and regulations governing the same.

Committee on Committees and Rules:

The Committee on Committees and Rules shall have charge of all matters relating to the creation of any new committees or changes in the standing committees or rules, and the filling of any vacancies in the chairmanship and membership of the committees as herein provided, caused by death, resignation or otherwise.

Temporary Chairmen of Committees.

RULE 41. In the event of his inability to attend any meeting of a committee, the chairman of such committee shall name a member of the committee to act as chairman in his stead.

Discharge of Select Committees.

RULE 42. On the acceptance of a final report from a select committee, the said committee shall be discharged without a vote, unless otherwise ordered.

Committee Meetings—Quorum—Record of Attendance of Aldermen at Committee Meetings.

RULE 43. Unless in cases of emergency, committee meetings shall be called at least twenty-four hours prior to the time of the meetings, and each member shall attend promptly at the hour stated in the notice; absence from three consecutive meetings of any committee, except in case of illness, attendance at meetings of committees or City Commissions, or absence from the City, shall automatically drop the member so absenting himself from the membership of such committee, and the City Clerk shall transmit a report of such vacancy to the City Council. This rule shall not apply to any meeting called during vacation.

The City Clerk shall keep an accurate and complete record of attendance of all Council committee sessions called, whether a quorum is present or not, and shall submit to the Council a semi-annual report at the first meeting after the summer vacation and the last meeting in March of each year, showing the number of committee meetings called, the number held, the number not held because of lack of a quorum, the number of opportunities each Alderman had for attending committee meetings and the percentage of his attendance based upon the number of meetings called (excluding those meetings from which absence is excused as aforesaid).

Times of Committee Meetings.

RULE 44. A meeting of all chairmen of the various Council committees shall be held, to be called by the chairman of the Committee on Finance, after the selection of Council committees, for the purpose of setting the day and hour of meetings of such committees throughout the term of the Council. Except in cases of emergency the schedule so adopted shall be complied with, and a copy of such schedule shall be posted by the City Clerk in a conspicuous place in the corridor adjoining the rooms provided for committee meetings.

New Business Required to be Referred to Committees.

RULE 45. All ordinances, petitions, resolutions, orders and communications to the Council shall, unless by unanimous consent,

be referred to appropriate committees, to be decided by the Chair, and only acted upon by the Council at a subsequent meeting, on the report of the committee having the same in charge.

Designation of Proper Committee.

RULE 46. When two or more committees are called, the rules appertaining thereto shall first be read, and the Council shall then decide to which committee the subject-matter shall go.

Appointments.

RULE 47. All appointments in which Council concurrence is necessary shall lie over until the next meeting of the City Council.

Reports of Committees.

RULE 48. All reports of committees shall be addressed: "To the Mayor and Aldermen of the City of Chicago in City Council Assembled." They shall briefly describe the matter referred, and the conclusion to which the committee has arrived; which conclusion shall be summed up in the form of an ordinance, order, resolution, recommendation or some other distinct proposition; and such reports may be presented to the Council by the chairman of the committees during the call of the wards, when the wards they respectively represent are reached.

Records of Proceedings of Committees.

RULE 49. Each committee of the City Council shall cause to be kept a record of its proceedings; and whenever a roll call is had by any such committees such roll shall be called starting with the First Ward and such record shall plainly indicate the vote of each member thereof, including the chairman. These records shall be filed in the office of the City Clerk and shall be open to public inspection.

General Provisions Concerning Ordinances.

RULE 50. All ordinances for the vacation of streets, alleys or other public property in the City of Chicago shall contain, in addition to the legal description of the property sought to be vacated by such ordinances, the popular description of the property, giving in the case of a lot the street number, in the case of an alley the names of the streets surrounding the block or blocks in which such alley

is located, and in the case of a street the names of the two nearest intersecting cross streets. Said legal and popular description and the name of the beneficiary or beneficiaries, and the name of the brokers or agents representing those interested shall be printed in the Journal of the Council Proceedings of the meeting at which any such ordinance is introduced.

Before any vacation ordinance is finally acted upon by the Council the legal description of the property sought to be vacated shall be verified by the City's Bureau of Maps and Plats.

All ordinances amending any section of the Chicago Municipal Code of 1922 or any general or special ordinance of the City, shall be so printed in the Council Journal that the change made in the original ordinance shall be shown in italics in the event that sentences are added to the original ordinance.

All ordinances approved by standing committees of the Council, except ordinances recommended and submitted by the Board of Local Improvements, shall, immediately upon such approval, be published in pamphlet form by the City Clerk for distribution, and shall be described by a sufficiently identifying caption in the council journal until after the final passage of said ordinance or ordinances by the City Council, when they shall be published in full.

All ordinances granting rights in streets to public utility corporations which relate to or include within their provisions anything concerning the vacation, closing, opening, crossing otherwise than on the surface, or undermining of streets or alleys shall, after the same have been approved by the special or standing committee of the Council to which they were referred, and after having been deferred and published, on being called up for final passage, be considered section by section; and no such ordinance shall be passed unless it has attached thereto as a part of same a complete and adequate map or plat showing in detail how the streets and alleys involved will be affected thereby.

All ordinances (except those emanating from the Board of Local Improvements) which are submitted to the City Council for action shall be presented in duplicate.

Adoption of "Robert's Rules of Order."

RULE 51. The rules of parliamentary practice comprised in the latest published edition of "Robert's Rules of Order" shall govern the Council in all cases to which they are applicable, and in which they are not inconsistent with the standing rules of this Council.

Suspension, Etc., of Rules.

RULE 52. These rules may be temporarily suspended by a vote of two-thirds of all the Aldermen entitled by law to be elected, and shall not be repealed, altered or amended unless by concurrence of two-thirds of all the Aldermen entitled by law to be elected.

Sergeant-at-Arms.

RULE 53. There shall be elected by ballot by the members of the Council, a Sergeant-at-Arms of this Council, and such assistants as the City Council may direct, who shall preserve order, obey the directions of the City Council and perform all duties usually appertaining to the office of Sergeant-at-Arms of deliberative assemblies; provided that such Sergeant-at-Arms shall be removable at the will of the Council by resolution duly adopted.

Censure.

RULE 54. Any member acting or appearing in a lewd, or disgraceful manner, or who uses opprobrious, obscene or insulting language to or about any member of the City Council, or who does not obey the order of the Chair, shall be, on motion, censured by a majority vote of the members present, or expelled by a two-thirds vote of all members elected. In case of censure the Sergeant-at-Arms, his assistants or any person acting under direction of the Chair shall cause the member censured to vacate his seat and come before the bar of the Council and receive censure from the Chair.

Floral Displays.

RULE 55. Floral displays or decorations shall not be permitted in the Council Chamber during the session of the Council.

Soliciting of Passes and Other Favors.

RULE 56. No member of this Council shall solicit or accept any pass or discriminatory or preferential rate or charge from any railroad or other public service corporation.

No member of this Council shall request or direct any city employe to solicit any such pass or discriminatory or preferential rate for the said Alderman or for any other purpose.

No member of this Council shall solicit, either for himself or for any other person, employment with any railroad or public service corporation operating in the City of Chicago.

105. Budget Provisions of the Charter of Cleveland, 1924.

The most important task of the city council is the adoption of the annual budget. Under the city manager plan, the council has liberty to increase, decrease, or defeat altogether the budget items as proposed by the manager. In this respect the council, under the city manager plan, is more powerful than under the strong mayor plan. Almost every activity of the city involves the expenditure of money, and by its control of appropriations the council can determine to a considerable degree the character and quality of municipal administration.

SOURCE—*Charter of the City of Cleveland* (Published by the City, November, 1923), 17-21.

FINANCIAL PROCEDURE.

Annual Budget Estimate.

Section 63. The fiscal year of the city shall begin with the first day of January of each year and shall end with the thirty-first day of December of the same year. On or before the fifteenth day of November in each year the City Manager shall prepare and submit to the Council a budget estimate of the revenues of the city and the expense of conducting the affairs thereof for the ensuing fiscal year. This estimate shall be compiled from detailed information obtained from the several departments, divisions and offices on uniform blanks furnished by the City Manager. The classification of the estimate shall be as nearly uniform as possible for the main functional divisions of such departments, divisions and offices and shall give the following information:

(a) An itemized estimate of the expense of conducting each department, division, office and commission.

(b) Comparison of such estimates with the corresponding items of expenditure for the last two complete fiscal years and with the expenditures of the current fiscal year plus an estimate of expenditures necessary to complete the current fiscal year.

(c) Reasons for proposed increases or decreases of such items of expenditure compared with the current fiscal year.

(d) A separate schedule for each department showing the things necessary for the department to do during the year and which of any desirable thing it ought to do if possible.

(e) Items of payroll increases as either additional pay to present employees, or pay for more employees.

(f) A statement from the Director of Finance of the total probable income of the city from taxes for the period covered by the estimate.

(g) An itemization of all anticipated revenue from sources other than the tax levy.

(h) The amount required for interest on the city's debt, for sinking fund and for maturing serial bonds.

(i) The total amount of outstanding city debts with a schedule of maturities on bond issues.

(j) Such other information as may be required by the Council.

The Council shall provide for printing at least one thousand copies of the estimate thus prepared for distribution to citizens who may call for them. Copies of the estimate shall also be furnished to the newspapers of the city and to the Public Library and each of its branches.

Annual Appropriation Ordinance.

Section 64. Upon receipt of the Manager's estimate the Council shall at once prepare an appropriation ordinance using the Manager's estimate as a basis. Provision shall be made for public hearings upon the appropriation ordinance before a committee of the Council or before the entire Council sitting as a committee of the whole. Following the public hearings, and before the third reading and final passage, the appropriation ordinance shall be published in the City Record with a separate schedule setting forth the items in the Manager's estimate which were omitted or changed by the Council and the reason for such omission or change. The Council shall not pass the appropriation ordinance until fifteen days after its publication nor before the first Monday in January. Upon passage of the appropriation ordinance by the Council it shall be published in the manner provided for other ordinances.

Preliminary Appropriations.

Section 65. After the beginning of the fiscal year, and before the annual appropriation ordinance has been passed, the Council,

upon recommendation in writing of the City Manager, may make appropriations for the current expenses of the city, chargeable to the appropriations of the year when passed, to an amount sufficient to cover the necessary expense of the various departments, divisions and offices until the annual appropriation ordinance is in force. No other liabilities shall be incurred by any officer or employe of the city, except in accordance with the provisions of the annual appropriation ordinance.

Transfer of Appropriations.

Section 66. Upon the written recommendation of the City Manager the Council may at any time transfer an unencumbered balance of an appropriation made for the use of one department, division or purpose to any other department, division or purpose; but no such transfer shall be made of revenues or earnings of any non-tax supported public utility to any other purpose.

Appropriation of Excess Revenue.

Section 67. If at any time the total accruing revenue of the city shall be in excess of the total estimated income thereof, as set forth in the annual budget estimate in compliance with subdivisions (f) and (g) of Section 63 of this Charter, the Council may from time to time appropriate such excess to such uses as will not conflict with any uses for which specifically such revenues accrued.

Expenditures Only Pursuant to Appropriations.

Section 68. No money shall be drawn from the treasury of the city, nor shall any obligation for the expenditure of money be incurred, except in pursuance of appropriations made by the Council; and whenever an appropriation is so made the Clerk shall forthwith give notice to the Director of Finance. At the close of each fiscal year the unencumbered balance of each appropriation shall revert to the fund from which it was appropriated and shall be subject to future appropriation; but appropriation may be made in furtherance of improvements of other objects or work of the city which will not be completed within the current year.

Accounts of Appropriations.

Section 69. Accounts shall be kept for each item of appropriation made by the Council and every warrant on the treasury shall state specifically against which of such items the warrant is drawn.

Each such account shall show in detail the appropriations made thereto by the Council, the amount drawn thereon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof.

Payment of Claims.

Section 70. No claim against the city shall be paid unless it be evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred; and each such director or officer and his surety shall be liable to the city for all loss or damage sustained by the city by reason of his negligent or corrupt approval of any such claim. The Commissioner of Accounts shall examine all payrolls, bills and other claims and demands against the city and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed and duly approved; that it is justly and legally due and payable; that an appropriation has been made therefor which has not been exhausted, or that the payment has been otherwise legally authorized; and that there is money in the city's treasury to make payment. He may investigate any claim and for that purpose may summon before him any officer, agent, or employe of any department, any claimant or other person, and examine him upon oath or affirmation relative thereto, which oath or affirmation he may administer. If the Commissioner of Accounts issue a warrant on the treasury authorizing payment of any item for which no appropriation has been made, or for the payment of which there is not a sufficient balance in the proper appropriation, or which is otherwise contrary to law or ordinance, he and his sureties shall be individually liable to the city for the amount thereof.

Money Certified in Treasury.

Section 71. No contract, agreement, or other obligation involving the expenditure of money, shall be entered into, nor shall any ordinance, resolution, or order for the expenditure of money be passed by the Council, or be authorized by any officer of the city, unless the Director of Finance first certify to the Council or to the proper officer, as the case may be, that the money required for such contract, agreement, obligation, or expenditure, is in the treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose, which certificate shall be filed

and immediately recorded. The sum so certified shall not thereafter be considered unappropriated until the city is discharged from the contract, agreement or obligation.

Money Deemed in Treasury.

Section 72. All moneys actually in the treasury to the credit of the fund from which they are to be drawn, and all moneys applicable to the payment of the obligation or appropriation involved that are anticipated to come into the treasury before the maturity of such contract, agreement or obligation, from taxes or assessments, or from sales of service, products or by-products or from any city undertaking, fees, charges, accounts and bills receivable or other credits in process of collection; and all moneys applicable to the payment of such obligation or appropriation, which are to be paid into the treasury prior to the maturity thereof, arising from the sale or lease of lands or other property, and moneys to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purposes of such certificate, be deemed in the treasury to the credit of the appropriate fund and subject to such certification.

Obligations—When Void.

Section 73. All contracts, agreements or other obligations entered into, all ordinances passed, and resolutions and orders adopted, contrary to the provisions of the preceding sections, shall be void, and no person whatever shall have any claim or demand against the city thereunder, nor shall the Council, or any officer of the city, waive or qualify the limits fixed by any ordinance, resolution or order, as provided in Section 71, or fasten upon the city any liability whatever, in excess of such limits or relieve any party from an exact compliance with his contract under such ordinance, resolution, or order.

Independent Continuous Audit.

Section 74. The Council shall cause a continuous audit to be made of the books of account, records and transactions of the administrative departments of the city. Such audits, during each fiscal year, shall be made by one or more certified public accountants, who for the three years next preceding, have held a certificate issued by the State Board of Accountancy of Ohio, or by a state

maintaining an equal standard of professional requirements, which entitles the holder of such certificate to an Ohio certificate. The duties of the Auditor or Auditors so appointed shall include the certification of all statements required under Section 55 of this Charter. Such statements shall include a balance sheet, exhibiting the assets and liabilities of the city, supported by departmental schedules, and schedules for each utility publicly owned or operated; summaries of income and expenditure, supported by detailed schedules; and also comparisons, in proper classification, with the last previous year. The report of such Auditor or Auditors for the fiscal year shall be printed and a copy thereof shall be furnished to the Ohio State Board of Inspection and Supervision of Public Offices, to the City Manager, to each member of the Council and to each citizen who may apply therefor; and a condensed summary thereof shall be published in the City Record.

Sinking Fund Commissions.

Section 75. The Sinking Fund Commission shall consist of the Mayor, the Director of Finance and the Director of Law. The Mayor shall be the President and the Director of Finance shall be the Secretary of the Commission. The Commission shall manage and control the Sinking Fund in the manner provided by general law or by ordinance.

106. Budget Recommendations of the City Manager of Cleveland, 1925.

The procedure preliminary to the adoption of a budget under the charter of Cleveland is illustrated by the following letter from the city manager to the council and a portion of the city manager's annual estimate. The portion selected gives the detailed estimates for the department of parks, boulevards, and playgrounds, and shows the classification of the various items of expenditure. The complete estimates of the manager for the ensuing year occupy ninety-three pages of the "City Record," the official newspaper of the city.

SOURCE—Cleveland, Ohio, *The City Record*, v. 12, no. 624 (December 9, 1925), 1769, 1792-1794.

COMMUNICATION

File No. 72065.

CITY OF CLEVELAND
OFFICE OF THE CITY MANAGER

November 16, 1925.

To the Honorable Council of the City of Cleveland.

Gentlemen:

In accordance with provision 63 of the charter of the City of Cleveland, I herewith transmit our estimate of receipts and expenses for the year 1926.

These estimates are based on our experience during 1925 and cover only the necessary expenditures for the year 1926.

I respectfully call your attention to the difference between our estimated receipts and the estimated expenditures which will have to be adjusted prior to the introduction of the appropriation ordinance.

Very truly yours,

W. R. HOPKINS,

City Manager.

Received and referred to the Committee on Appropriation and Finance.

CITY MANAGER'S ANNUAL ESTIMATE.

	1	2	3	4	5	6	7
	1923 Expendi- tures	1924 Expendi- tures	Actual Expendi- tures to Sept. 30, 1925	Estimated Expendi- tures from Oct. 1, 1925 to Dec. 31, 1925	Total Estimated Expendi- tures 1925	Request for 1926	1926 Compared with 1925
							Increase Decrease
30—PARKS, BOULEVARDS AND PLAYGROUNDS							
EXPENSE							
A—SALARIES AND WAGES.....	186,257.00	286,234.74	232,903.55	68,592.87	301,496.42	306,131.00	4,634.58
1—Supervision	3,000.00	4,450.00	3,875.00	925.00	4,800.00	9,000.00	4,200.00
2—Clerk hire	4,414.95	6,994.63	7,269.66	2,770.34	10,040.00	7,260.00	2,780.00
3—Labor operation	168,534.65	259,870.11	212,049.86	56,510.56	267,560.42	270,071.00	2,510.58
4—Labor maintenance—D.....	10,308.00	13,076.00	9,709.03	3,366.97	19,096.00	19,800.00	704.00
4—Labor maintenance—E.....	1,924.00	1,924.00					
B—SUPPLIES.....	27,004.10	39,736.36	33,229.39	10,970.61	44,200.00	35,327.35	8,872.65
—Explanation—							
1—Office	323.85	697.77	989.03	10.97	1,000.00	860.00	140.00
2—Fuel, light and power.....	9,437.75	11,179.43	8,034.61	5,965.39	14,000.00	12,830.00	1,170.00
4—Clothing	1,605.71	3,932.71	3,031.08	968.92	4,000.00	3,930.00	70.00
5—Forage, shooting and barn..	8,127.54	12,481.27	8,257.35	1,742.65	10,000.00	7,237.00	2,763.00
6—Motor vehicle	351.06	1,175.83	3,403.09	596.91	4,000.00	1,787.50	2,212.50
7—Mechanical	112.58	43.15	76.45	23.55	100.00	100.00	
8—Cleaning and toilet.....	1,352.46	1,913.57	3,086.16	913.84	4,000.00	2,412.85	1,587.15
9—Medical and surgical.....	14.25	8,312.63	6,349.00	97.38	7,000.00	6,270.00	730.00
10—Other	5,618.90	27,130.31	4,142.00	4,358.00	8,500.00	11,000.00	2,500.00
C—MAINTENANCE—LANDS.....	501.51						
—Explanation—							
D — MAINTENANCE — BUILDINGS, STRUCTURES AND IMPROVEMENTS	12,800.41	26,164.27	6,157.13	7,842.87	14,000.00	26,500.00	12,500.00
—Explanation—							
1—Buildings	12,237.33	13,430.69	4,260.59	3,239.41	7,500.00	16,000.00	8,500.00
2—Bridges and viaducts.....	59.34	244.38	337.64	3,162.36	3,500.00	4,500.00	1,000.00
6—Docks and wharves.....	328.96	387.53					
7—Streets, boulevards, roads							
10—Sidewalks, steps, etc.....	26.85	634.45	200.05	299.95	500.00	1,000.00	500.00
11—Other	101.00	8,102.93	346.75	653.25	1,000.00	1,000.00	
12—Fences	79.98	990.88	189.39	310.61	500.00	5,000.00	4,500.00
19—Other	26.95	2,373.41	822.71	177.29	1,000.00		1,000.00

CITY MANAGER'S ANNUAL ESTIMATE—Continued

	1	2	3	4	5	6	7
	1923 Expendi- tures	1924 Expendi- tures	Actual Expendi- tures to Sept. 30, 1925	Estimated Expendi- tures from Oct. 1, 1925 to Dec. 31, 1925	Total Estimated Expendi- tures 1925	Request for 1926	1926 Compared with 1925 Increase Decrease
E — MAINTENANCE — EQUIP- MENT	12,258.88	13,028.68	9,691.86	1,708.14	11,400.00	10,400.00	..... 1,000.00
— Explanation—							
1—Furniture and furnishings	20.40	54.45	.....	.....	.....	200.00	..... 200.00
2—Furniture and furnishings	2,216.24	2,151.40	223.59	176.41	400.00	900.00	..... 500.00
3—Machinery, tools and imple- ments	3,173.53	4,709.79	3,912.44	587.56	4,500.00	1,200.00	..... 3,300.00
4—Instruments and apparatus	9.35	.....	.....	.....	.....	.....	.....
5—Vehicles and harness	137.81	469.28	.....	.....	.....	100.00	..... 100.00
6—Motor vehicles	3,990.30	681.38	168.49	81.51	250.00	1,000.00	..... 750.00
10—Water mains	.....	63.70	.....	.....	.....	.....	.....
17—Electric wiring systems— —local	.....	594.32	.....	.....	.....	.....	.....
19—Other	.....	4,304.36	5,205.00	795.00	6,000.00	7,000.00	..... 1,000.00
23—Steam lines	3,711.25	.....	182.34	67.66	250.00	.....	..... 250.00
F—MISCELLANEOUS SERVICES	9,509.40	30,392.37	4,545.83	1,179.17	5,725.00	6,525.00	..... 800.00
— Explanation—							
1—Transportation of employees	.....	211.69	104.83	95.17	200.00	100.00	..... 100.00
2—Traveling expenses of em- ployes—outside of city	.....	.....	331.13	68.87	400.00	.....	..... 400.00
3—Telephone and telegraph	769.22	794.15	682.05	117.95	800.00	960.00	..... 160.00
5—Premiums on surety bonds	.....	.....	50.00	50.00	100.00	.....	..... 100.00
7—Team and motor truck hire —operation	608.00	460.00	189.00	211.00	400.00	2,000.00	..... 1,600.00
8—Insurance	1,364.71	1,251.88	1,175.05	124.95	1,300.00	1,165.00	..... 135.00
9—Taxes and rents	1,252.78	648.35	1,262.38	237.62	1,500.00	1,300.00	..... 200.00
10—Court costs, judgments and damages	.....	177.14	125.00	75.00	200.00	1,000.00	..... 800.00
12—Street lighting	93.00	.....	15.00	10.00	25.00	.....	..... 25.00
17—Music	3,877.00	14,443.79	.....	.....	.....	.....	.....
19—Other	1,572.35	12,405.37	611.39	188.61	800.00	.....	..... 800.00

107. Appropriation Ordinance of the City of Cleveland, 1926.

Under the Cleveland and other manager plan charters, the manager's estimate of moneys needed for expenditures during the ensuing year is advisory only. The council may or may not follow his estimates, in accordance with its view of proper city policy. In the appropriation ordinance from which a selection is given below the Cleveland council reduced the amount requested by the manager¹ for the department of parks, boulevards, and playgrounds from \$486,083.35 to \$425,366.49.

SOURCE—Cleveland, Ohio, *The City Record*, v. 13, no. 631 (January 27, 1926), 55, 72-73.

ORDINANCE NO. 72425-A

As a substitute for Ordinance No. 72425

By Mr. Schooley

AN ORDINANCE to make appropriations for the current expenses and other expenditures of the City of Cleveland for the year ending December 31, 1926.

Whereas, an emergency exists in order to provide funds for the usual daily operation of all municipal departments; now, therefore,

Be it ordained by the Council of the City of Cleveland, State of Ohio:

Section 1. That to provide for the current expenses and other expenditures of the City of Cleveland for the fiscal year ending December 31, 1926, the following sums be and they are hereby appropriated, viz.:

. . . .

¹The corresponding portion of the manager's estimate will be found as § 106.

GENERAL FUND

30-PARKS, BOULEVARDS AND PLAYGROUNDS

		Request for 1926	Allowed by Council
EXPENSE			
A-SALARIES AND WAGES			
1-Supervision	.....	306,131.00	285,231.00
2-Clerk hire	.....	9,000.00	9,000.00
3-Labor operation	.....	7,260.00	7,260.00
4-Labor maintenance-D	.....	270,071.00	249,171.00
4-Labor maintenance-E	.....	19,800.00	19,800.00
B-SUPPLIES	.....	35,327.35	31,610.49
-Explanation-			
1-Office	.....	860.00	860.00
2-Fuel, light and power	.....	12,830.00	11,520.00
4-Clothing	.....	3,930.00	3,930.00
5-Forge, shoeing and barn	.....	7,237.00	7,237.00
6-Motor vehicle	.....	1,787.50	1,787.50
7-Mechanical	.....	.....	.....
8-Cleaning and toilet	.....	2,412.85	2,405.99
9-Medical and surgical	.....	6,270.00	3,270.00
10-Other	.....	11,000.00	8,000.00
C-MAINTENANCE-LANDS	.....	26,500.00	21,500.00
-Explanation-			
D-MAINTENANCE-BUILDINGS, STRUCTURES AND IMPROVEMENTS	.....	16,000.00	13,000.00
-Explanation-			
1-Buildings	.....	4,500.00	3,500.00
2-Bridges and viaducts	.....	.....	.....
6-Docks and wharves	.....	1,000.00	1,000.00
7-Streets, boulevards, roads and driveways	.....	5,060.00	4,000.00
10-Sidewalks, steps, etc.	.....	.....	.....
11-Other	.....	10,400.00	10,400.00
12-Fences	.....	200.00	200.00
19-Other	.....	900.00	900.00
E-MAINTENANCE-EQUIPMENT	.....	1,200.00	1,200.00
-Explanation-			
1-Furniture and furnishings-office	.....	100.00	100.00
2-Furniture and furnishings-departmental	.....	1,000.00	1,000.00
3-Machinery, tools and implements	.....	.....	.....
4-Instruments and apparatus	.....	.....	.....
5-Vehicles and harness	.....	.....	.....
7-Motor vehicles	.....	.....	.....
10-Water mains	.....	.....	.....
17-Electric wiring systems-local	.....	7,000.00	7,000.00
19-Other	.....	.....	.....
23-Steam lines	.....	.....	.....

GENERAL FUND—Continued

	Request for 1936	Allowed by Council
F—MISCELLANEOUS SERVICES	6,525.00	5,025.00
—Explanation—		
1—Transportation of employees—local	100.00	100.00
2—Traveling expenses of employees—outside of city		
3—Telephone and telegraph	960.00	960.00
5—Premiums on surety bonds		
7—Team and motor truck hire—operation		
8—Insurance	2,000.00	500.00
9—Taxes and rents	1,165.00	1,165.00
10—Court costs, judgments and damages	1,300.00	1,300.00
13—Street lighting	1,000.00	1,000.00
17—Music		
19—Other		
OUTLAY		
X—LANDS	50,000.00	35,000.00
—Explanation—		
2—Betterments	50,000.00	35,000.00
Y—BUILDINGS, STRUCTURES AND IMPROVEMENTS	26,900.00	16,900.00
—Explanation—		
1—Buildings		
7—Streets, boulevards, roads and driveways	26,900.00	16,900.00
11—Other		
12—Fences		
19—Other		
OUTLAY		
Z—EQUIPMENT	13,300.00	11,300.00
—Explanation—		
2—Furniture and furnishings—departmental		
3—Machinery, tools and implements	2,300.00	2,300.00
4—Instruments and apparatus		
5—Vehicles and harness		
7—Motor vehicles (motor driven fire apparatus excluded)	7,000.00	5,000.00
8—Books, maps and charts		
14—Street lamps		
19—Other	4,000.00	4,000.00
TOTALS	486,083.35	424,366.49

108. Civil Service Provision, Dayton, Ohio, Charter, 1913.

Almost all larger cities in the United States now have a civil service commission or board, whose business it is to examine applicants for appointive positions and to make recommendations to the appointing authority.

SOURCE—*Charter of the City of Dayton, Ohio* (As adopted August 12, 1913. Republished by the City, January, 1922), 18-20.

CIVIL SERVICE.**Members.**

Section 93. The Commission shall appoint three electors of the city as a Civil Service Board; one to serve for two years and one for four years and one for six years, to take office January 1, 1914, or as soon thereafter as appointed and qualified. Thereafter members of the Civil Service Board shall be appointed to serve for six years and until their successors have been appointed and have qualified. Members of the Board shall not hold any other public office. The Commission may remove any member of the Board upon stating in writing the reasons for removal and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the Commission for the unexpired term.

Officers of the Board.

Section 94. Immediately after appointment, the Board shall organize by electing one of its members chairman. The Board shall appoint a chief examiner who shall also act as secretary. The Board may appoint such other subordinates as may by appropriation be provided for.

Classification.

Section 95. The Civil Service of the city is hereby divided into the unclassified and classified service.

1. The unclassified service shall include:

- A. All officers elected by the people.
- B. The City Manager.
- C. The heads of departments and heads of divisions of departments and members of appointive boards.

D. The deputies and secretaries of the Manager and one assistant or deputy, and one secretary for each department, and the Clerk of the Commission.

2. The classified service shall comprise all positions not specifically included by this charter in the unclassified service. There shall be in the classified service three classes to be known as the competitive class, non-competitive class, and labor class.

- A. The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination.
- B. The non-competitive class shall consist of all positions requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character, as may be determined by the rules of the Board.
- C. The labor class shall include ordinary unskilled labor.

Rules.

Section 96. The Board, subject to the approval of the Commission, shall adopt, amend, and enforce a code of rules and regulations, providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, industry, which shall have the force and effect of law; shall make investigations concerning the enforcement and effect of this chapter and of the rules adopted. It shall make an annual report to the Commission.

Section 97. The Chief Examiner shall be the employment officer of all city employes coming under the classified service. He shall provide examinations in accordance with regulations of the Board and maintain lists of eligibles of each class of the service of those meeting the requirements of said regulations. Positions in the classified service shall be filled by him from such eligible lists upon requisition from and after consultation with the City Manager. As positions are filled the employment officer shall certify the fact, by proper and prescribed form, to the City Treasurer and the director of the department in which the vacancy exists.

Promotion.

Section 98. The Board shall provide for promotion to all positions in the classified service, based on records of merit, efficiency, character, conduct and seniority.

Probation Period.

Section 99. An appointment or promotion shall not be deemed complete until a period of probation not to exceed six months has elapsed, and a probationer may be discharged or reduced at any time within the said period of six months, upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the Board.

Discharge or Reduction.

Section 100. An employe shall not be discharged or reduced in rank or compensation until he has been presented with reasons for such discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in his own defense. The reason for such discharge or reduction and any reply in writing thereto by such employe shall be filed with the Board.

Appeal to the Board.

Section 101. Any employe of any department in the city in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the City Manager, may appeal from the decision of such officer to the Civil Service Board, and such Board shall define the manner, time, and place by which such appeal shall be heard. The judgment of such Board shall be final.

Present Civil Service Employes.

Section 102. All persons in the employ of the city holding positions in the classified service, as established by this charter at the time it takes effect, shall, unless their positions be abolished, retain same until discharged, reduced, promoted, or transferred in accordance herewith.

Pay Rolls Certified.

Section 103. The treasurer or other public disbursing officer shall not pay any salary or compensation for service to any person holding a position in the classified service unless the pay roll or account for such salary or compensation shall bear the certificate of the Board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this charter and of the rules established thereunder.

Investigations.

Section 104. In any investigation conducted by the Board it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation and to administer oaths to such witnesses.

Political Belief, Assessments and Activity.

Section 105. No person in the classified service or seeking admission thereto, shall be appointed, reduced or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color or religious belief. No officer or employe of the city shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or political purpose whatever. No person holding a position in the classified service shall take any part in political management or affairs or in political campaigns further than to cast his vote or to express privately his opinions.

Violations and Penalties.

Section 106. The Board, subject to the approval of the Commission, shall, by ordinance, determine the penalties for the violation of the Civil Service provisions of this charter.

Salaries.

Section 107. The salaries of the Board and its employes shall be determined by the Commission and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this charter.

109. Civil Service Rules for the City of Chicago, 1925.

Municipal civil service commissions usually have the power of making rules controlling the classification of positions in the city service, applications for employment, examinations, promotions, and removals. Unless they exceed the authority given the commission, such rules practically have the force of laws.

SOURCE—Chicago Civil Service Commission, *Civil Service Laws and Rules for the City of Chicago as in effect November 15, 1925* (Chicago, 1925), 15-32.

RULE 1.

CLASSIFICATION.

Section 1. Classification of Service. The offices and places of employment in the service of the City of Chicago and other municipal services governed by the city civil service act, except those lawfully exempted, are hereby classified according to the subsequent sections of this rule.

Sec. 2. Branches of Service. The service is divided into five main branches, each including offices and places of employment of the same general kind and character of work, herewith designated and defined as follows:

Branch I.—ADMINISTRATIVE. Embracing positions the duties of which are principally administrative.

Branch II.—OPERATION AND CONSTRUCTION. Embracing positions the duties of which involve operation, maintenance and up-keep of municipal activities and the construction and betterment of municipal works and works over which the city is required to exercise supervision or regulation.

Branch III.—HEALTH AND WELFARE. Embracing positions the duties of which relate to public health work and work in connection with the various activities for the public welfare.

Branch IV.—PUBLIC SAFETY. Embracing positions the duties of which involve the operation and efficiency of the Police and Fire Departments of the city government and work related thereto.

Branch V.—LABOR. Embracing positions the duties of which involve common labor such as can be performed by persons without special skill or experience.

Sec. 3. Classes of Service. Within each branch the service is divided into classes, each including offices and places of employment of the same relative kind and character of work, herewith designated and defined as follows:

BRANCH I.

Class A. Clerical, Accounting and General Office Service, embracing positions the duties of which involve auditing, accounting, recording, stenography, machine operating or any kind of general office work and supervision thereof.

- Class B. Statistical, Technical and Mercantile Service**, embracing positions the duties of which involve examining, reorganizing, investigating, systematizing or performing statistical work or the purchase and sale of real estate and commodities and supervision thereof.

BRANCH II.

- Class C. Building Maintenance Service**, embracing positions the duties of which involve the security, care and cleanliness of buildings and grounds.
- Class D. Engineering, Designing and Structural Service**, embracing positions the duties of which require training and ability in civil, mechanical, electrical or chemical engineering, drafting, designing or architecture, or related technical work.
- Class E. Electrical and Mechanical Service**, embracing positions the duties of which require knowledge or practical skill in electrical or mechanical operation or expert supervision thereof.
- Class F. Steam and Operating Engineering Service**, embracing positions the duties of which require training and ability in the operation or maintenance of equipment for the production of heat, light or power.
- Class G. River, Harbor and Transportation Service**, embracing positions the duties of which relate to the operation of rivers, harbors and bridges and the conveyance of merchandise or passengers.
- Class H. Street, Water, Sewer and Waste Disposal Service**, embracing positions the duties of which involve the paving, repairing and cleaning of streets, the laying and repairing of sidewalks, the maintenance and extension of sewer and water systems, the collection and disposal of waste and garbage, and the operation of dumps, loading stations and reduction works.
- Class J. Industrial Trades**, embracing positions the duties of which require practical skill in recognized industrial trades or crafts, and supervision thereof.
- Class K. Building Trades**, embracing positions the duties of which require practical skill in the recognized building and construction trades and supervision thereof.

BRANCH III.

- Class L. Library Service**, embracing positions the duties of which require training and ability in library methods, as related to the service of the Chicago Public Library and its branches.
- Class M. Medical Service**, embracing positions the duties of which require training and ability in the various branches of medicine, surgery and laboratory work.
- Class N. Nursing Service**, embracing positions the duties of which require training in nursing or ability to render that kind of service.
- Class O. Inspectional Service**, embracing positions the duties of which relate to the inspection of premises and conditions.
- Class P. Institutional Service**, embracing positions the duties of which require domestic, industrial or guardianship work and supervision thereof, connected with the operation and maintenance of sanitariums, hospitals and corrective institutions.
- Class R. Recreational Service**, embracing positions the duties of which require training and ability in public playground methods and the operation of recreation centers, parks, bathing beaches and public baths.

BRANCH IV.

- Class S. Police Service**, embracing positions in the active ranks of the Police Department and positions directly related to the performance of police duty.
- Class T. Fire Service**, embracing positions in the active ranks of the Fire Department and positions directly related to the performance of fire duty.

BRANCH V.

- Class U. Non-Competitive Service**, embracing positions the duties of which make a choice by competition impracticable, and where selections for service may be made by lot, involving common labor performed by persons without special skill or experience.

Sec. 4. Grades. The service is also divided into grades, uniform to all branches and classes, except Branch V, Class U, each

grade including offices and places of employment of the same comparative importance and responsibility, herewith designated and defined as follows:

- Grade 1. **Minor Grade.** Positions in the lower ranks.
- Grade 2. **Junior Grade.** Positions of routine duties.
- Grade 3. **Senior Grade.** Positions of intermediate responsibility.
- Grade 4. **Principal Grade.** Positions more advanced with limited authority.
- Grade 5. **Major Grade.** Positions involving authority to direct or regulate.
- Grade 6. **Superior Grade.** Positions involving supervision and control.
- Grade 7. **Chief Grade.** Positions of an executive character, involving full administrative responsibility.

There are no grades in Branch V, Class U, Non-Competitive Labor Service.

Sec. 5. **Grade and Rank Contrasted.** Grade is more inclusive than rank within the meaning of these rules. In situations where the ascertained status of positions herein classified into grades accords to one group or individual a definite or acknowledged standing over another, the recognition of rank shall take precedence over grade. The Commission shall define rank for examinations and appointments in its official notices of examinations and in the minutes of its proceedings and shall determine in each instance the distinction between ranks, the necessity for examination from rank to rank and eligibility thereto. Rank shall be held to include only those offices and places of employment performing the same particular kind and character of work and of equal authority and precedence.

Sec. 6. **Compensation.** Compensations are those lawfully appropriated for by competent authority attached to the titles of positions in the classified service, and as applied to grades or ranks, are subject to fluctuations not affecting the nature or tenure of any position. Where varying compensations are established for branches and classes of the service and applied to grades or ranks original appointment to a particular office or place shall be made at the lowest fixed rate, unless the commission expressly authorizes appointment at a higher rate under circumstances noted in the minutes of its proceedings. Advancement from one compensation to another within a grade or rank shall be made according to

efficiency and seniority as ascertained by the Commission. The Commission reserves to itself the exclusive right to determine the limits of compensation of grades or ranks and to decide when the maximum compensation of an office or place of employment has reached the limit of the grade or rank to which it belongs.

Sec. 7. **Titles.** Titles shall be indicative of the branch, class and grade or rank of each position in the classified service and changes shall be reported to the Commission.

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RULE II.

APPLICATIONS.

Sec. 1. **Forms.** Applications for positions in Branches I, II, III and IV shall be filed upon blank forms furnished by the Commission, and applicants must comply with the requirements of said forms in every respect.

Sec. 2. **Time for Filing.** The Commission shall fix the period during which applications will be received for any original entrance examination in Branches I, II, III and IV. Applicants for promotion examinations shall register in the office of the Commission prior to the beginning of such examinations.

Sec. 3. **Residence.** No person shall be admitted to examination for any position in the classified service who has not been an actual resident of the city of Chicago for at least one year next preceding date of examination; provided, however, that in examinations for offices or places requiring technical, professional or scientific knowledge and experience or manual skill of a high order, this rule may be waived by the Commission by an order entered in its minutes.

Sec. 4. **Age.** Applicants for original entrance examinations for any positions in Grade III or above, except as otherwise provided in these rules, must be not less than 21 years of age. In examinations for positions in Grades I and II the Commission shall prescribe the age limits of applicants in the notice of examination. The Commission shall prescribe maximum or minimum age limits in examinations where the requirements of the service necessitate same.

Sec. 5. **Special Qualifications.** In examinations for positions requiring technical, professional or scientific knowledge or experience, or for positions where special qualifications are prescribed

by laws or ordinances, or where certificates or licenses are required for the practice of the profession, art or trade involved, the Commission may demand satisfactory proof of such special qualifications upon the part of applicants.

Sec. 6. Disqualifications. Proof of false statements made in any applications, or of bad character, dissolute habits, immoral conduct, or of dismissal for cause from any public service shall be grounds for excluding an applicant from any examination, or for removal from an eligible register, or for dismissal from the service after certification, provided that any such applicant or eligible or appointee shall be given an opportunity to be heard in his own defense before final action by the Commission.

RULE III.

EXAMINATIONS.

Section 1. General Scope. The general scope of all examinations shall include the subjects upon which applicants are to be examined, with the weight given to each subject to represent its value in determining general average. The subjects and respective weights in both original and promotion examinations for any office or place shall conform to the schedules prescribed in the published notices of examinations to be held as provided for in Section 7 of the Civil Service Act.

Sec. 2. Ratings and Averages. Each subject of examination shall be rated independently on the scale of 100. The rating of each subject shall be multiplied by the weight assigned to such subject. The resulting product shall be added and the total product divided by the total weights of all subjects in the examination. The resulting quotient is the general average which shall determine the order in which the name of the eligible shall appear upon the eligible register.

Sec. 3. Eligible Registers. Eligible registers shall be compiled from the averages computed according to the preceding section, and the name of no person shall be entered on an eligible register resulting from an examination whose general average shall be less than 70% of complete proficiency in the subjects of examination taken as a whole. The names of eligibles shall be entered upon registers in the order of their average percentages provided that whenever two or more eligibles shall have the same average percentage, priority in time of filing of application,

or of registering for promotion shall determine their respective standing.

....

Sec. 7. Scope of Subjects. The subjects of examinations may include duties of positions, educational tests, practical tests, personality tests, courtesy and discipline tests, reports, discussions or theses, statements of experience, tests of knowledge of civil government, tests of knowledge of the City of Chicago, tests of knowledge of laws and ordinances, ascertained merit or efficiency, seniority or service, medical examinations, physical tests, or any or all of them, and such subjects may be given in the form of a written test, or an oral test, or an ocular demonstration, or any or all of them, according to the schedules of subjects with weights assigned, set forth in the published notices of examinations.

Sec. 8. Medical and Physical Examinations. The Commission may determine by medical and physical examinations and height and weight requirements whether applicants for any position possess the prescribed standards of health and physique. The result of such examinations may be considered only in determining the fitness of applicants to be examined further, or may be taken as a factor in determining general averages according to the published notices of examinations.

....

RULE IV.

CERTIFICATIONS.

Section 1. Requisitions. Requisitions for certification shall be upon forms prescribed by the Commission and shall specify the title, branch, class, grade or rank, general duties and compensation of the position to be filled. Where vacancies are to be filled from a promotion register, the Commission shall certify to the appointing officer the names of the three standing highest on such register, and where there are less than three names thereon, the Commission shall certify same to the appointing officer who shall appoint one of those so certified.

....

Sec. 6. Temporary Appointment. When it is necessary to make temporary appointments, appointing officers shall request and receive written notice of approval of same from the Commission before persons are so employed. In cases of bona fide emer-

gency, where the appointing officer can show the necessity for immediate appointment, same may be made subject to the approval of the Commission.

RULE V.

PROMOTION, EFFICIENCY AND SENIORITY.

Section 1. **Method of Promotion.** Promotion shall be accomplished by means of competitive examination, including such subjects and weights, hereinbefore provided for in these rules, as the Commission may prescribe, and in addition thereto, the Commission shall investigate and ascertain the merit or efficiency in service of the persons submitting themselves to examination, rating such merit or efficiency on the scale of 100 and assigning proportionate weight thereto. The Commission shall also ascertain a proper award on account of seniority of service of the persons submitting themselves to examination, in accordance with a subsequent provision of this rule, and said seniority rating, together with ascertained merit or efficiency rating, and examination rating shall be combined and averaged so as to compute the general average standing of all applicants for promotion. The name of no person shall be entered upon a promotion register whose general average shall be less than 70 per cent of complete proficiency in examination, ascertained merit or efficiency and seniority taken as a whole.

Sec. 2. **Eligibility.** The Commission in its notices of examinations shall define lines of eligibility for promotion, specifying by title of position the particular rank or grade entitled to take such promotion examination. Promotion examinations shall be held when the next lower rank, whether in the same or a lower grade, as determined by the Commission, contains two or more eligible persons desirous of taking examination. Should not more than one eligible candidate register, or should all candidates fail to pass, an original entrance examination shall then be held. No persons shall be eligible for promotion from a position in any rank or grade to fill a vacancy in the next higher rank unless the position in which he is employed at the time of examination is in the same branch and class of service as the position to be filled and unless such person is at the time of examination actually employed in such branch and class, or is on leave of absence or is eligible for reinstatement.

Sec. 3. **Seniority.** Credit for seniority shall be given only for

actual service in the rank or grade from which promotion is sought, whether such service has been continuous or not. . . .

Sec. 4. **Efficiency.** Records of efficiency of appointees in the classified service shall be ascertained by the Commission and may include reports derived from heads of departments or bureaus or from investigations made by the Commission. The Commission may from time to time, by written order recorded in the minutes or in its regulations prescribe subjects or factors to be used in determining efficiency markings, provide a schedule of demerits and assign weights to such factors and demerits. The subjects or factors prescribed shall be based upon the duties of the particular position to which they apply, shall be uniform for all positions having similar duties and shall be such as will test fairly the quality and amount of service performed and the weights assigned shall be such as will represent fairly their relative values. These records may be used for awarding merit or efficiency ratings, in promotion examinations, or independent investigations may be made for such examinations as in the opinion of the Commission circumstances warrant.

. . . .

RULE VI.

REMOVALS AND REHEARINGS.

Section 1. **Charges.** Charges shall be filed with the Commission and shall state specifically the facts alleged to constitute the cause for discharge. Investigations of charges may be broad in their character and evidence may be heard upon any facts or circumstances pertinent or applicable to such charges.

Sec. 2. **Hearings.** The Commission shall cause copies of written charges filed with it against any officer or employe in the classified service, to be served personally upon the officer or employe against whom such charges are filed, or shall have the same mailed to his address as shown by the records of the Commission, notifying him of the time and place of investigation of said charges. No such investigation shall be held less than five days after the serving or mailing of notice.

. . . .

Sec. 4. **Finding and Decision.** The finding and decision of the Commission or any officer or board appointed by it, following an investigation of charges, shall be preserved by the Secretary, and notice of said finding and decision sent to the depart-

ment head or employing officer for enforcement. If the finding or decision is that an officer or employe is guilty of charges investigated, and removal or discharge is ordered, such order of removal or discharge shall become effective forthwith.

Sec. 5. **Rehearings.** Petitions for rehearing of persons removed or discharged from the classified service after investigation as provided in Section 12 of the Civil Service Act, may be filed with the Commission within thirty days after the finding and decision have been recorded. Petitions shall state fully the grounds upon which applications for rehearings are based. In case said petitions are allowed, rehearings of original charges with any new evidence bearing thereupon may be conducted and findings and decisions as a result of such rehearings entered, but in case said petitions are not allowed, the orders of discharge shall remain in force.

RULE VII.

PAY ROLLS.

Section 1. **Legality of Employment and Compensation.** Pay rolls and vouchers for services rendered covering compensation for any office or place of employment in the classified service shall be forwarded to the Commission by department heads or employing officers for certification to the Comptroller or other auditing officer as to the legality of employment and right of any officer or employe to compensation in accordance with the provisions of the Civil Service Act.

RULE VIII.

TRANSFERS AND LEAVES OF ABSENCE.

....

RULE IX.

LAY-OFFS, RESIGNATIONS AND REINSTATEMENTS.

....

RULE X.

LABOR.

Section 1. **Examinations.** It shall be the duty of the Chief Examiner, under the direction of the Commission, in places of employment classified under Branch V, Class U, Non-Competitive Labor Service, to maintain a standing notice of examination, as

provided in the Civil Service Act, for laborers to be held periodically at such locations as may be specified in said notice. Said examinations for laborers shall consist of medical or physical tests sufficient to prove the fitness of applicants to perform the work required in the places they seek to fill. Oral tests may also be made a part of said examinations to prove experience and character.

....

RULE XI.

ADMINISTRATION.

Section 1. **President of the Commission.** The Commission shall elect one of its members as President to serve until his successor is elected. The President shall be the executive officer of the Commission.

Sec. 2. **Meetings.** Regular meetings of the Commission shall be held daily except on Saturdays, Sundays and holidays, at 2:00 o'clock P.M. unless otherwise fixed at a preceding meeting.

Special meetings may be held at any time on the call of a commissioner or the chief examiner and secretary. Action taken at a special meeting must be approved at a regular meeting to be effective.

Sec. 3. **Order of Business.** The order of business at meetings of the Commission shall be as follows: Approval of minutes, investigations, departmental reports, eligible lists, examinations and miscellaneous matters.

Sec. 4. **Amendment of Rules.** Changes in these rules shall be proposed at a meeting, spread upon the minutes, and action deferred thereon for not less than one week.

Sec. 5. **Regulations.** The Commission may from time to time adopt regulations of procedure for the administration of these rules, the government of its office, and the guidance of its examiners and employes in the performance of duties assigned to them.

Sec. 6. **Definitions.** As used in these rules the word "Commission" means the Civil Service Commission of the City of Chicago, and "Commissioners" the members of said body. The words "officer or employe" mean any person holding an office or position or place of employment in the classified service, whether permanent or temporary, who is paid from public funds. The word "position" or "place" means an office or place of employ-

ment as used in the Civil Service Act. The masculine noun or pronoun as used herein shall include the feminine. The Civil Service Act referred to in these rules is an act entitled "AN ACT TO REGULATE THE CIVIL SERVICE OF CITIES," approved and in force March 20, 1895, as amended May 6, 1897, June 22, 1915, and June 28, 1919.

110. Administrative Organization of Spokane, 1926

The council has the duty of establishing, by ordinance, the detailed administrative organization of the city. It fixes the number and titles of the various officers and employees subordinate to the executive and legislative bodies. The city of Spokane is governed under the commission plan, and the following ordinance designates the personnel of the various departments under the five-member commission, composed of the mayor and commissioner of public utilities, the commissioner of public affairs, the commissioner of public works, the commissioner of finance, and the commissioner of public safety.

SOURCE—Spokane, Wash., *Official Gazette*, v. XV, no. 52 (December 30, 1925), 8913-8914.

ORDINANCE No. C3725

(By Fleming)

An ordinance relating to and fixing the number and designation of the various officers, assistants, deputies and employees of the city of Spokane, repealing all ordinances and parts of ordinances in conflict herewith; and declaring an emergency.

The City of Spokane does ordain:

Section 1. That beginning with the first day of January, 1926, the officers and employees in the several departments and divisions of the city government, shall be as follows:

DEPARTMENT OF PUBLIC AFFAIRS

Health division:

General Supervision

- 1 assistant health officer
- 1 chief clerk
- 2 assistant clerks

Sanitary Inspection

3 inspectors

1 inspector (collect milk samples)

Such emergency inspectors as may be needed.

Health Clinic

1 assistant health officer

1 public health nurse

1 assistant public health nurse

1 intelligence officer

Food Regulation

1 milk inspector

1 bacteriologist

1 restaurant and bakery inspector

Quarantine

1 quarantine officer

Rivercrest Hospital:

1 Superintendent

1 G. U. nurse

Nurses as required

1 steward

1 assistant steward

1 utility man

1 housekeeper

Extra labor as needed

Dental Clinic:

1 dentist

City Laboratory Division:

1 chemist

1 assistant chemist

Emergency Hospital:

1 chief steward

2 assistant stewards

Weights and Measures Division:

1 sealer

Crematory Division:

1 superintendent

1 assistant superintendent

1 night foreman

1 bookkeeper

1 collector

1 auto mechanic

1 stable man

1 blacksmith

1 engineer

1 assistant engineer

Laborers and other day and night employees as needed.

DEPARTMENT OF PUBLIC SAFETY

Commissioner's Division:

1 secretary

Fire Division:

1 chief

2 assistant chiefs

1 secretary

1 electrician

1 master mechanic

1 utility mechanic

2 linemen

16 captains

22 lieutenants

3 engineers

122 firemen, assigned to duty as drivers, pipemen, truckmen and alarm operators.

Employees of the fire division may be assigned by the chief of said division to shop or inspection duties.

Police Division:

1 chief of police

1 secretary of police

1 clerk

1 stenographer

1 captain of detectives

2 captains of police

8 sergeants of police

15 plain clothes men

1 court sergeant

1 Bertillon expert

3 patrol chauffeurs

- 2 emergency chauffeurs
- 3 alarm operators (not members of police force)
- 1 substitute operator (not member of police force)
- 1 police woman (not member of police force)
- 75 patrolmen
- 3 jailors
- 3 jail matrons
- 1 substitute jail matron (not member of police force)
- Special police as needed.

(Nothing herein contained, however, shall have the effect of precluding the Commissioner of Public Safety or the Chief of Police, or other superior officers of the said police division from changing the duties or positions of the employees of the police division, or assigning or reassigning the said employees to the different duties or employments in the police division, as the ordinances of the City of Spokane may authorize.)

Labor Agent's Division:

- 1 labor agent
- 1 assistant labor agent

Public Market Division:

- 1 market master as needed

DEPARTMENT OF PUBLIC UTILITIES

Commissioner's Division:

- 1 secretary

City Hall Division:

- 1 custodian (may be combined with some other position)
- 3 elevator operators
- 1 utility man (may be combined with that of elevator operator)
- 5 janitors
- 1 telephone operator

Water Division:

- 1 superintendent
- 1 chief accountant
- 1 material charge clerk
- 1 filing clerk
- 1 clerk to superintendent
- 1 stockkeeper
- 1 superintendent of distribution

- 1 civil engineer
 - 1 chief rate clerk
 - 1 accountant
 - 3 ledger clerks
 - 1 permit clerk
 - 1 counter clerk
 - 1 addressograph clerk
 - 1 chief of meter bureau
 - 1 meter bureau clerk
 - 1 meter shop foreman
 - 2 meter inspectors
 - 4 meter readers
 - 7 meter repairmen
 - 1 chief inspector
 - 3 inspectors
 - 1 repair yard foreman
 - 1 tapping foreman
 - 1 clerk at meter building
 - 1 chief hydraulic station engineer
 - 6 assistant hydraulic station engineers
 - 1 assistant hydraulic station engineer, part time
 - 1 chief electric station engineer
 - 2 assistant electric station engineers
 - 1 engineer, Lincoln Heights Station
 - 3 pump tenders, Lincoln Heights station
- Laborers and mechanics as the needs of the water division may require.

DEPARTMENT OF PUBLIC WORKS

Commissioner's Division :

- 1 superintendent
- 1 stenographer clerk
- 1 distribution clerk

City Engineering Division :

- 1 city engineer
- 1 chief clerk
- 1 counter clerk
- 1 abstract clerk
- 1 principal assistant engineer

- 1 field engineer
- 1 sewer engineer
- 1 bridge engineer
- 2 instrument men
- 4 draftsmen
- 4 rodmen

Improvement inspectors as needed.

Bridge foremen and bridge men as needed.

Sewer Cleaning Division:

- 1 superintendent
- 1 inspector

Truck drivers and sewer men as needed.

Garage Division:

- 1 foreman
- 1 assistant foreman

Mechanics, machinists and laborers as needed.

Asphalt Plant Division:

- 1 superintendent
- 1 street foreman, as needed
- 1 plant foreman, as needed
- 1 plant engineer, as needed
- 1 roller engineer, as needed
- 1 heater engineer, as needed

Such skilled and unskilled laborers as may be needed.

Street Division:

- 1 superintendent of streets
- 1 street foreman

Utility men, chauffeurs, truck drivers, teamsters, roller engineers, tractor drivers, pilers, white wings, patrolmen, team drivers, grader men and laborers as needed.

Building Inspection Division:

- 1 building inspector
- 1 assistant building inspector
- 1 stenographer-permit clerk
- 1 electrical inspector
- 1 assistant electrical inspector
- 1 plumbing inspector
- 1 boiler and elevator inspector

DEPARTMENT OF FINANCE

City Treasurer's Division :

- 1 city treasurer (appointed and subject to removal by the Commissioner of Finance)
- 1 cashier
- 1 assistant cashier
- 1 tax clerk "A"
- 1 tax clerk "B"
- 1 bookkeeper
- 1 bond and warrant clerk

City Auditor's Division :

- 1 city auditor (appointed and subject to removal by the City Council)
- 1 deputy auditor
- 1 deputy and counter clerk
- 1 bookkeeper
- 1 assistant bookkeeper
- 1 general checker
- 1 cage checker

Purchasing Agent's Division :

- 1 purchasing agent
- 1 stenographer-clerk
- 1 storekeeper

DIVISIONS NOT UNDER INDIVIDUAL COMMISSIONER

Legal Division :

- 1 corporation counsel
- 1 first assistant
- 1 second assistant
- 2 clerks
- 1 claim agent (whose appointment shall be subject to approval of the City Council) ; the claim agent may, if desired, be appointed from the city police force.

City Clerk's Division :

- 1 city clerk
- 1 first deputy
- 1 second deputy
- Extra help as needed.

Civil Service Division :

- 1 secretary

UNDER THE MAYOR

Police Court Division:

1 police judge

1 police court clerk

1 assistant police court clerk

Section 2. Nothing in this ordinance shall prevent the employment of additional help by the head of any department or division when authorized by the City Council.

Section 3. The head of each department may reduce the number of employees in his department, whether specified in this ordinance or not, at any time when, in his judgment, the work of the department justifies the reduction.

Section 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 5. An urgency and emergency for the passage of this ordinance is hereby declared to, and does, exist, and the same shall take effect and be in force from and after its passage.

Passed the City Council December 21, 1925.

C. A. FLEMING, Mayor.

Attest: O. A. DIRKES, City Clerk.

111. Salary Ordinance of Spokane, 1926

The city council also has the duty of fixing the salaries of all officers and employees save those whose compensation is designated by the charter. Only such detailed provisions of the following ordinance as relate to the department of finance and to the various divisions not under any individual commissioner are given below. These sections are fairly representative of the ordinance as a whole.

SOURCE—Spokane, Wash., *Official Gazette*, v. XV, No. 52 (December 30, 1925), 8914-8916.

ORDINANCE No. C3726

(By Fleming)

An ordinance fixing the salaries and compensation to be paid the several officers of the City of Spokane, their assistants, and

the employees of said city; repealing all ordinances and parts of ordinances in conflict herewith, and declaring an emergency.

The City of Spokane does ordain:

Section 1. That beginning with the first day of January, 1926, the compensation to be paid the several officers and employees of the city hereinafter enumerated shall be as follows: . . .

DEPARTMENT OF FINANCE

City Treasurer's Division:

City Treasurer	\$ 253.00	per month
Cashier	190.00	per month
Assistant cashier	160.00	per month
Tax clerk	152.50	per month
Tax clerk	147.50	per month
Bookkeeper	160.00	per month
Bond and warrant clerk	147.00	per month

City Auditor's Division:

City auditor	\$ 253.00	per month
Deputy city auditor	180.00	per month
Deputy and counter clerk	157.00	per month
Bookkeeper	190.00	per month
Assistant bookkeeper	165.00	per month
General checker	163.00	per month
Cage checker	144.00	per month

Purchasing Agent's Office:

Purchasing Agent	\$ 253.00	per month
Stenographer-clerk	138.00	per month
Storekeeper	160.00	per month

DIVISIONS NOT UNDER INDIVIDUAL COMMISSIONER

Legal Division:

Corporation counsel	\$5,000.00	per annum
First assistant	287.50	per month
Second assistant	201.25	per month
Clerk	150.00	per month
Clerk	125.00	per month
Claim agent	155.00	per month

City Clerk's Division:

City clerk	\$ 250.00 per month
First deputy	155.00 per month
Second deputy	150.00 per month

Police Court Division:

Police Judge	\$ 150.00 per month
Police Court clerk	103.50 per month
Assistant Police Court clerk	100.00 per month

Civil Service Division:

Secretary	\$ 125.00 per month
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Section 2. The chief of a city division may, with the approval of the head of his department, employ temporary help when needed and when funds have been appropriated therefor. Such temporary employment shall not exceed the period of thirty days, and the compensation to be paid temporary employees shall be fixed on a per diem basis by the head of the division. Such compensation may be less than but shall not exceed the salary or wage established in this ordinance for like employment.

Except as otherwise provided in this ordinance, the compensation to be paid probationary employees of the city certified from the Civil Service Commission shall be fixed by the chief of the division during the probationary period. The compensation so fixed may be less than, but shall not exceed the wage established in this ordinance for such service.

Section 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. An urgency and emergency for this ordinance is hereby declared to, and does, exist, and the same shall take effect and be in force from and after its passage.

Passed the City Council December 21, 1925.

C. A. FLEMING, Mayor.

Attest: O. A. DIRKES, City Clerk.

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